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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 175

THE INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JUNE 24, 1942.

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VOL. I

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IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff,
vs.
UNITED STATES OF AMERICA, et al., Defendants.

Civil Action
File No. 3775

COMPLAINT
(EQUITABLE RELIEF SOUGHT)

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IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION,
Plaintiff.

vs.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
THE BALTIMORE AND OHIO RAILROAD COMPANY,
ROBERT E. WOODRUFF and JOHN A. HADDEN, Trustees of the Erie Railroad and of the Chicago & Erie Railroad Company,
THE NEW YORK CENTRAL RAILROAD COMPANY,
THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY,
THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Defendants.

Civil Action

File No. .....

COMPLAINT

1. The plaintiff, Inland Waterways Corporation, brings this complaint against the Interstate Commerce Commission and the United States of America for the purpose of suspending, enjoining, setting aside, and annulling a certain order, more particularly hereinafter described, issued by the Interstate Commerce Commission (hereinafter referred to as the Commission) on December 1, 1941, in a proceeding before the Commission known as *Investigation & Sus-*

Extension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory, said order being reproduced as Appendix D, on pages 47 to 77 hereof, and brings this complaint against defendants other than the United States of America (said defendants being hereinafter referred to collectively as carrier defendants) for the purpose of enjoining and prohibiting said carrier defendants from publishing and filing with the Commission tariffs or schedules of rates and charges found by the Commission in said order to be just and reasonable and not shown to be otherwise unlawful, and permitted by said order to be published and made effective, and from making effective and enforcing said rates and charges. This action arises under, the United States is made a defendant herein, and the jurisdiction of this Court is conferred by, U. S. C., Title 28, Sections 41 (28), 43, 44, 45, 45(a), 46, 47, and 48, as hereinafter more fully appears.

2. Plaintiff, Inland Waterways Corporation, is a corporation organized and existing under the laws of the United States, with its principal office and place of business at St. Louis, Missouri; it is engaged in the operation of a common carrier barge line system of transportation on the Mississippi River and certain of its tributaries, including a common carrier barge line service in interstate commerce via water from Kansas City, Missouri-Kansas, on the Missouri River, from St. Louis, Missouri, East St. Louis, Illinois, and various other ports in Illinois, Iowa, and Minnesota on the Mississippi River, and from various ports in Illinois on the Illinois River to Chicago, Illinois; and is a common carrier by water subject to Part III of the Interstate Commerce Act (U. S. C., Title 49, Sections 901-923).

3. Defendant, The Baltimore and Ohio Railroad Company, is a corporation chartered by the states of Maryland and Virginia; its principal office and place of business is at Baltimore in the state of Maryland; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Missouri, Illinois, Indiana, Kentucky, Ohio, West Virginia, Virginia, Pennsylvania, New York, Maryland, Delaware, New Jersey, and other states in the United States.

4. Defendants, Robert E. Woodruff and John A. Hadden are trustees, duly appointed under the laws of the United States, of the properties of the Erie Railroad and Chicago & Erie Railroad Company; their general offices and places of business are at Cleveland in the state of Ohio and at New York City in the state of New York; and they operate lines of railroad for the carriage of freight throughout the states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, and other states in the United States.

5. Defendant, The New York Central Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Ohio, Illinois, and Pennsylvania; its principal office and place of business is at Albany in the state of New York; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of New York, Massachusetts, Pennsylvania, Ohio, Indiana, Illinois, Michigan, West Virginia, Kentucky, Missouri, New Jersey, and other states in the United States, and Canada.

6. Defendant, The New York, Chicago and St. Louis Railroad Company, is a corporation operating

under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Pennsylvania, Ohio, Indiana, and Illinois; its principal office and place of business is at Cleveland in the state of Ohio; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of Indiana, Illinois, Ohio, New York, Pennsylvania, Missouri, Michigan, and other states in the United States.

7. Defendant, The Pennsylvania Railroad Company, is a corporation incorporated under the laws of the state of Pennsylvania; its principal office and place of business is at Philadelphia in the state of Pennsylvania; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Missouri, and other states in the United States, and Canada.

8. Defendant, The Chesapeake and Ohio Railway Company, is a corporation incorporated under the laws of the state of Virginia; its principal office and place of business is at Richmond in the state of Virginia; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Illinois, Indiana, Ohio, Kentucky, West Virginia, Virginia, and other states in the United States.

9. Defendants above named (other than the United States) are common carriers, or trustees, or receivers, of common carriers, and are engaged in the transportation of property by rail in interstate commerce be-

tween various points on their lines and also between points on their lines and points on lines of railroad connecting therewith; and more particularly, as to grain arriving at Chicago via rail, via lake, and via barge from origins to the west, northwest, and southwest thereof, (grain so arriving being hereinafter referred to as ex-rail, ex-lake, and ex-barge, respectively) and temporarily stored at Chicago before reshipment therefrom, are engaged in the transportation of such grain upon the reshipment thereof from Chicago to destinations throughout the various states of the United States located to the east of Chicago.

10. In the course of its business, plaintiff transports to Chicago, Illinois, grain in interstate commerce via barge over various waterways, including the Illinois Waterways, from the various ports referred to in paragraph (2) above (said grain being hereinafter referred to as ex-barge grain), from whence said grain is reshipped both via lake steamer and via the lines of the defendant carriers and other railroads to destinations to the east of Chicago. Said interstate transportation is conducted on a port-to-port basis without any common arrangement with carriers beyond Chicago for through transportation. Prior to September 18, 1940, said transportation was not subject to the Interstate Commerce Act, but on the date last mentioned said transportation became subject to Part III of the Interstate Commerce Act by virtue of the amendments to that Act added by the Transportation Act of 1940, enacted September 18, 1940 (U. S. C., Title 49, Sections 901-923). Since March 1, 1941, said transportation has been conducted for rates and charges published and filed with the Interstate Commerce Commission pursuant to the requirements of the statutes just mentioned.

11. For many years the carrier defendants have maintained in tariffs, lawfully published and filed with the Commission, the same separately stated proportional or reshipping rates from Chicago, Illinois, to destinations located throughout the various states to the east thereof on ex-barge grain as on ex-lake or ex-rail grain, all of said proportional and reshipping rates being lower than the corresponding rates published for application to local grain shipped from Chicago and Chicago rate points. By tariffs filed to become effective October 15, 1939, (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. No. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3372), the defendant carriers proposed (a) to restrict the application of the said reshipping and proportional rates so as to make them not applicable to ex-barge grain when reshipped from Chicago; and (b) to subject said ex-barge grain to the higher basis of the local rates from Chicago. Representative examples of tariff rules which then and now provide for the application of the proportional or reshipping rates to ex-rail, ex-barge, and ex-lake traffic, and representative examples of the tariff rules containing the proposed restriction are contained in Appendices II and III to the report of Division 2 in *Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory*, reported in 246 I. C. C. 353, and reproduced on page 19 *et seq.* hereof. The plaintiff, on September 1, 1939, filed with the Commission its written protest against the change in rates proposed in the tariff schedules above noted, urging that such change in rates, if made effective, would be in violation of Sections 1 and 3 of the Interstate Commerce

Act (U. S. C., Title 49, Sections 1 and 3), and on October 4, 1941, filed its supplemental written protest, requesting that the Commission suspend the operation of said schedules and enter into an investigation concerning the lawfulness thereof, pursuant to the authority conferred upon the Commission by paragraph (7) of Section 15 of the Interstate Commerce Act (U. S. C., Title 49, Section 15(7)).

12. Thereupon, the Commission, by order of October 14, 1939, reproduced herein as Appendix A,* suspended the operation of said proposed change in rates and instituted an investigation into the lawfulness thereof in *Investigation & Suspension Docket No. 1718*, above mentioned, and the carrier defendants, by appropriate supplements to their tariffs, deferred the effective date of the above described proposed change in rates on ex-barge traffic, and said change in rates and charges has not yet been made effective.

13. Subsequent to the order shown in Appendix A, hearings were duly had in the proceeding instituted by that order and the parties were heard on brief, on exceptions to a report proposed by an Examiner of the Commission, and in oral argument.

14. During the pendency of the proceeding, the Transportation Act of 1940, approved September 18, 1940, was enacted, said Act making the following change in the substantive law as it existed at the time the proceeding was instituted. First, common carriers by water, including the plaintiff, were made subject to Part III of the Interstate Commerce Act, and required, after the effective date thereof, to conduct port-to-port transportation, theretofore exempt from regulation, upon rates and charges published in tariffs filed with the Interstate Commerce Commission.

* Pages 15 to 18, inclusive herein.

Secondly, a national transportation policy was declared (54 Stat. L. 899), which reads as follows:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Thirdly, paragraph (3) of Section 3 of the Interstate Commerce Act, which prior to September 18, 1940, did not apply to common carriers by water engaged in port-to-port transportation not subject to the Interstate Commerce Act, and which then read as follows:

> "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this chapter, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in

> their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

was amended so as to become paragraph (4) of Section 3 of Part I of the Interstate Commerce Act, and to read as follows:

> "All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

15. On exceptions to report proposed by an Examiner of the Interstate Commerce Commission in said proceeding, and in the oral argument therein, both of which were subsequent to September 18, 1940, the Commission was requested by plaintiff to dispose of said proceeding in the light of the changes in substantive law noted in the immediate preceding paragraph.

16. On July 31, 1941, Division 2 of the Interstate Commerce Commission entered its report and order in said proceeding, said report and order being reproduced as Appendix B hereto.* In that report and order the said Division 2 found that the tariff schedules under suspension had not been shown to be unlawful. Accordingly, Division 2 vacated and set aside the suspension

* Following page 18 hereof.

order and discontinued the proceeding as of August 30, 1941.

17. On August 22, 1941, the Commission modified its order of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941.

18. Thereafter, under date of August 26, 1941, the plaintiff filed with the Commission its petition seeking a reconsideration and rehearing in said proceeding, said petition being reproduced as Appendix C hereto.* In said petition the plaintiff particularly averred the amendments to the Interstate Commerce Act which resulted from the Transportation Act of 1940, as above noted, prayed that the Commission reverse the findings of Division 2 as to the lawfulness of the proposed rates and find said proposal to be unlawful, and also requested a further hearing if the Commission deemed the record inadequate fully to inform the Commission of the facts pertinent to the issues in view of the above noted amendment to Section 3 of the Interstate Commerce Act. In said petition plaintiff specifically sought from the Commission a finding that under said Act, as amended, the proposal of the defendant carriers would result in discrimination as between connecting carriers in violation of paragraph (4) of Section 3 of the Act as amended.

19. On September 30, 1941, the Commission further modified its order of July 31, 1941, as modified by its order of August 22, 1941, so as to postpone the effective date thereof until the further order of the Commission.

20. On December 1, 1941, the Commission issued its report and order on reconsideration in said proceeding, said report and order being reproduced as Appendix D hereto.† In its said report the Commission found that the proposed schedules had been shown to be just and

* Pages 28 to 46 hereof.
† Pages 47 to 77 hereof.

reasonable and had not been shown to be otherwise unlawful and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding. In said report, made a part of the order, the Commission took no note of the changes in substantive law which occurred while the proceeding was pending and made no findings whatsoever regarding the charge asserted by plaintiff of discrimination as between connecting carriers, other than to state the ultimate conclusion that the proposed schedules had not been shown to be unlawful.

21. If said order is permitted to become effective, and the defendant carriers make the change in rates and charges authorized thereby, the plaintiff will be unable to compete with rail carriers for the transportation of grain transported to Chicago for the purpose of reshipment therefrom by rail. The value of ex-barge grain at Chicago is precisely the same as the value at Chicago of ex-lake or ex-rail grain of the same species and grades. Under the tariffs found lawful by the Commission, the rate on ex-barge grain from Chicago to New York, as a representative destination, will be 8.5 cents per hundred pounds higher than the rate from Chicago to New York on ex-rail or ex-lake grain. No shipper will use the line of the plaintiff for its inbound transportation to Chicago on grain to be shipped via rail to eastern destinations in the face of the rate penalty beyond Chicago just noted. Rather, shippers will use the lines of rail carriers with which the plaintiff competes for hauls to Chicago, since thereby reshipment via rail from Chicago to eastern destinations can be obtained at 8.5 cents per hundred pounds less freight rate than if the grain so reshipped was brought into Chicago by the plaintiff. By reason of

the circumstances just described, plaintiff will be unable to secure traffic which it would otherwise secure, and will be subjected to irreparable damage and injury if the defendant carriers are authorized by the Commission to make effective the changes in rates provided by the tariffs involved in the above-described proceeding before the Commission.

21. The report and order of the Commission of December 1, 1941, is unlawful and void and beyond the power of the Commission to make for the following reasons:

(a) Said report and order are not supported by essential findings of fact;

(b) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in failing to make a specific finding and disposition of the issue tendered by the plaintiff of the alleged violation of paragraph (4) of Section 3 of the Interstate Commerce Act;

(c) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in failing to dispose of the issue tendered for determination in the light of the amendments to the Interstate Commerce Act made by the Transportation Act of 1940;

(d) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in failing to grant plaintiff a rehearing by reason of the change in the governing statute which occurred while the proceeding was pending before the Commission and subsequent to the hearings on which the Commission predicated its decision;

(e) In entering said report and order, the Commission acted arbitrarily in that it declined to exercise the

function and jurisdiction conferred on it by paragraph (7) of Section 15 and paragraph (11)(b) of Section 6 of the Interstate Commerce Act, (U. S. C., Title 49, Sections 15(7) and 6(11)(b) and concluded that the proceeding before it was not a proper one in which to prescribe proportional rates on the ex-barge traffic lower than local rates;

(f) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in giving effect to the measure of the inbound rate and the relative length and nature of the inbound transportation service in its determination of the lawfulness under paragraph (4) of Section 3 of the Interstate Commerce Act (U. S. C., Title 49, Sections 3-4), of the proposal of the eastern railroads to make proportional and reshipping rates from Chicago to the east higher on ex-barge grain brought to Chicago by connecting water lines subject to Part III of the Interstate Commerce Act than on ex-rail grain brought to Chicago by connecting railroad lines subject to Part I of the Interstate Commerce Act;

(g) Said report and order of the Commission is without support in the evidence, since the record before the Commission, made before the enactment of Part III of the Interstate Commerce Act, contains no evidence to support findings of fact upon which the Commission could base a valid conclusion that the application on ex-barge grain brought to Chicago by the plaintiff of a higher reshipping rate than is contemporaneously provided as a reshipping rate on ex-rail traffic brought to Chicago by competing railroad carriers would be non-discriminatory and not in violation of paragraph (4) of Section 3 of the Interstate Commerce Act; and

(h) The Commission was without authority in law or in fact to make said order.

WHEREFORE, plaintiff prays:—

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order until the final determination of this cause and that upon final hearing a decree be entered enjoining said carrier defendants from making effective said change in tariffs unless and until approved as lawful by a lawful order of the Commission; and

(c) That plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

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APPENDIX A.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 14th day of October, A. D. 1939

INVESTIGATION AND SUSPENSION DOCKET No. 4718

GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

It appearing, That there have been filed with the interstate Commerce Commission tariffs containing schedules stating new individual and joint regulations and practices affecting rates and charges to become effective on the 15th day of October, 1939, and later, designated as follows:

Chicago and North Western Railway Company (Charles M. Thomson, Trustee):
Supplements Nos. 7 and 9 to I. C. C. No. 10610;

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):
Supplements Nos. 8 and 10 to I. C. C. No. B-6931;
Supplements Nos. 8 and 10 to I. C. C. No. B-6932;

B. T. Jones, Agent:

Supplements Nos. 21 and 23 to I. C. C. No. 3047;
Supplements Nos. 64 and 67 to I. C. C. No. 3055 and MF-I. C. C. No. 16;
Supplements Nos. 4 and 7 to I. C. C. No. 3272 and MF-I. C. C. No. 30;
Supplements Nos. 4 and 7 to I. C. C. No. 3300;
I. C. C. No. 3356 and MF-I. C. C. No. 34;

L. E. Kipp, Agent:

Supplements Nos. 4 and 7 to I. C. C. No. A-3066;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the regulations and practices stated in the said schedules contained in said tariffs, viz.:

Chicago and North Western Railway Company (Charles M. Thomson, Trustee);

Supplements Nos. 7 and 9 to I. C. C. No. 10610, on pages 2 thereof, all provisions shown under the caption "Reshipping or Proportional Rates from Chicago, Ill.";

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):

Supplements Nos. 8 and 10 to I. C. C. No. B-6931, on pages 3 thereof, all provisions shown under the caption "Application of Reshipping or Proportional Rates from Chicago, Ill.";

Supplement No. 8 to I. C. C. No. B-6932, on page 3 thereof, Item 500-C;

Supplement No. 10 to I. C. C. No. B-6932, on page 3 thereof, Item 500-D;

B. T. Jones, Agent:

Supplement No. 21 to I. C. C. No. 3047, on page 5 thereof, Notes 20, 25 and 35; on page 6 thereof, Notes 40 and 47;

Supplement No. 23 to I. C. C. No. 3047, on page 5 thereof, Note 20; pages 6 to 11 inclusive thereof, except Item 110-A;

Supplement No. 64 to I. C. C. No. 3055 and MF-I. C. C. No. 16, page 3 thereof; on page 4 thereof, Notes 38, 40 and 50;

Supplement No. 67 to I. C. C. No. 3055, and MF-I. C. C. No. 16, on page 3 thereof, Notes 20 and 22; pages 4 to 10 inclusive thereof, except Note 45;

Supplement No. 4 to I. C. C. No. 3272, and MF-I. C. C. No. 30, on page 2 thereof, Notes 1 and 22;

Supplement No. 7 to I. C. C. No. 3272, in full;

Supplement No. 4 to I. C. C. No. 3300, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. 3300, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47;

I. C. C. No. 3356, and MF-I. C. C. No. 34, the title page thereof insofar as it cancels schedules suspended by this suspension order; on page 90 thereof, Notes 20 and 22; pages 91 to 95 inclusive thereof; on page 96 thereof, Note 41; on pages 98 and 99 thereof, Note 50;

Agent L. E. Kipp:

Supplement No. 4 to I. C. C. No. A-3066, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. A-3066, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47.

It further appearing, That said schedules make certain increases affecting rates for the transportation of grain, grain products, and grain by-products, carloads, in interstate and foreign commerce, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and

that the use of the regulations and practices therein stated be deferred upon interstate and foreign traffic until the 15th day of May, 1940, unless otherwise ordered by the Commission, and no change shall be made in such regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That this order shall apply to said schedules only to the extent that said schedules apply to transportation subject to Part I of the Interstate Commerce Act.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and upon B. T. Jones and L. E. Kipp, Agents, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission, division 2.

(Seal) W. P. Bartel.

Secretary.

Here follow Appendix "B"—Report of I. C. C., Docket No. 4718—[fols. 20-66]

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

Submitted January 8, 1941. Decided July 31, 1941

Proposed cancelation of the application of reshipping or proportional interstate rail rates on grain, grain products, and grain byproducts, in carloads, from Chicago and Peoria, Ill., St. Louis, Mo., and other related grain rate-break points, to eastern destinations, when that traffic arrives at the rate-break points by boat or barge over the Illinois Waterways on rates not subject to our jurisdiction, found justified. Order of suspension vacated, and proceeding discontinued.

F. H. Cole, Jr., Leo P. Day, and *George Dyche* for respondents.

Nuel D. Belnap, John S. Burchmore, Robert N. Burchmore, Helen W. Munsert, C. E. Childe, Charles S. Macaulay, W. G. Oliphant, L. D. Shaffer, David F. Root, Edward B. Hayes, and *G. W. Baxter* for protestants.

A. B. Enoch, Carson L. Taylor, H. I. Allen, H. C. Barron, P. F. Gault, W. H. Jacobs, E. M. Martin, Elmer A. Smith, Fred C. Furry, J. E. Flansburg, R. M. Hegberg, Henry Christianson, W. H. Blair, and *F. W. Maronn* for western and other railroads supporting respondents.

Freeman Bradford, Lawrence Farlow, J. S. Brown, William T. McArthur, Arthur L. Schier, and *W. V. Wheat* for interests supporting respondents.

Herbert J. Campbell for the Chicago Board of Trade.

F. B. McElroy for the Illinois Commerce Commission.

Edward T. Breen and *Ben Schwartz* for the attorney general of the State of Illinois.

Willis Crane, Halsey McGovern, and *Mastin G. White* for the United States Department of Agriculture.

Bernard L. Glover, Charles D. Miller, E. B. Smith, Y. H. Sparrow, C. L. Bruno, George R. Watson, T. C. Burwell, H. H. Heftes, and *P. L. Holmes* for other interests.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, SPLAWN, AND ALLDREDGE

BY DIVISION 2:

Exceptions were filed by respondents, and protestants, including those representing the Chicago interests and the Chicago Board of Trade, to the report proposed by the examiner; and the western rail

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lines appearing in support of the proposal, as well as the respondents, filed replies to the exceptions of the Chicago protestants. The proceeding was orally argued.

By schedules filed to become effective October 15, 1939, and later dates, respondents propose to cancel the application of reshipping or proportional interstate rail rates on grain, grain products, and grain byproducts,[1] in carloads, from Chicago and Peoria, Ill., St. Louis, Mo., and other related grain rate-break points, to central, trunk-line, and New England territories, including a portion of eastern Canada,[2] now applied on domestic as well as export traffic, when such traffic arrives at the reshipping or proportional-rate point by boat or barge over the Illinois Waterways on rates not subject to the Interstate Commerce Act, and to apply higher local rates in lieu thereof.

Upon protests of the Federal Barge Lines, Continental Grain Company, Norris Grain Company, and others, operation of the proposed schedules was suspended until May 15, 1940, and they have since been voluntarily postponed pending the determination of this proceeding. Unless otherwise stated, rates and charges will be in cents per 100 pounds.

In *Baltimore Chamber of Commerce* v. *Baltimore & O. R. Co.*, 22 I. C. C. 596, wherein the reasonableness of similar proportional or reshipping rates here in issue, although different in amount, were considered (at least so far as Baltimore, Md., as a destination is concerned), it was stated that there is no substantial difference between a "reshipping" rate and what is known as a "proportional" rate. This interpretation has been adhered to in a long line of later reports. As the terms are synonymous, the term "proportional" will hereinafter be used except where reference is made to a specific tariff item covering "reshipping" rates.

Under the proposal, higher local rates will apply from the rate-break points (of which Chicago is the most important) to eastern destinations on grain which has moved into such points in boats or barges over the Illinois Waterways, hereinafter called ex-barge traffic, on rates not filed with us, whereas the lower proportional rates will continue to apply east of Chicago, for example, on grain which has moved into that point by rail, by lake on rates not on file, and by certain barge lines which file rates here.

History of the Illinois Waterways.—During the period from 1848 to 1908, what was then called the Illinois & Michigan Canal was open to

[1] Hereinafter collectively called grain.

[2] Trunk line and New England territories, including points in eastern Canada, hereinafter collectively called trunk line territory.

the transportation of grain and other commodities into Chicago. In 1908 the State of Illinois authorized a $20,000,000 bond issue for the improvement of the Illinois Waterways, including a portion of the Illinois River. In 1930 the Federal Government took over the project, and the Waterways were again opened for navigation into Chicago in 1933. Exclusive of the expenditures on the old Illinois & Michigan Canal, it is estimated that the total cost of improvements of the Illinois Waterways for navigation purposes has been $60,000,000. No lock charges are made on the Illinois Waterways. Upon the reopening of these waterways certain individuals, grain merchants, and elevator companies invested large sums in elevator facilities along its course. They now fear that respondents' proposal to deny the application of the proportional rates beyond Chicago on ex-barge traffic will be in derogation of their investments, and will seriously curtail the further development of the waterways. As will be later shown, however, most of the grain transported over the waterways to Chicago moves out of that point by lake, rather than by rail.

The principal points along the Illinois Waterways from which grain is barged into Chicago are Morris, Paytonville, Seneca, Marseilles, Ottawa, Utica, La Salle, Depue, Bureau, Hennepin, Henry, Lacon, Chillicothe, Peoria, Pekin, and Havana, Ill. The approximate distances over this route to Chicago range from 57.5 to 200.9 miles. Most of the terminal elevators are located in South Chicago and are ordinarily served through the Calumet-Sag Canal, entailing an additional water haul of about 10 miles. The Continental Grain Company and the Norris Grain Company operate river elevators along this route as well as terminal elevators at Chicago or South Chicago. River elevators are also operated by other interests.

Volume of grain moving in and out of Chicago.—Appendix I shows the number of bushels of corn, wheat, oats, and soybeans received at Chicago during the years 1932 to 1939, inclusive, and the transportation facility used on the in-bound movement.

During the years 1932 to 1938, both inclusive, the annual productions of corn in the State of Illinois were 422,131,000, 238,545,000, 167,808,000, 318,510,000, 217,751,000, 449,616,000, and 379,350,000 bushels, respectively. In 1934 and 1936 droughts occurred in Illinois and the West and this accounts for the increased tonnage of corn moving into Chicago over the lake during the years 1935 to 1937, and particularly for the corn that was imported through the port of Chicago during 1937. Ordinarily, corn is a surplus crop in the portion of Illinois and the small part of Indiana here considered. This corn-producing section lies west and southwest of Chicago and is bounded on the north by Herbert and Oregon, Ill., on the west by Prophetstown

and Neponset, Ill., on the southwest by Cazenovia, Ill., on the south by Ocoya, Danforth, and Pittwood, Ill., and on the east by Schneider and North Hayden, Ind. The Chicago grain dealers consider this section as within their trade territory. Much of the 65,774,000 bushels of corn received in Chicago in 1939 by rail, and all of the 13,206,000 bushels received over the Illinois Waterways, originated in this section. In addition to being served by many western rail lines, this producing section is also served by certain of the eastern rail-line respondents in this proceeding, including The New York Central Railroad Company, hereinafter called the New York Central. Chicago is the greatest corn market in the world, and the record in the instant proceedings shows that during 1939 the six Chicago protestants controlled 83 percent of all the grain coming into this market. They also operate all of the public elevator or storage space at Chicago.

As corn has become the principal grain moving into Chicago over the Illinois Waterways, the rates and charges on it will be discussed in detail. Substantial quantities of wheat, oats, and soybeans also move into Chicago from this producing section.

Published rail rates into Chicago.—The table below shows the interstate rates applicable on grain and the intrastate rates on corn to Chicago from the origin points previously mentioned. The so-called specifics are not published rates, but represent the proportion to Chicago of one-factor through rates from these origins to eastern destinations. The intrastate rail rates on corn were established for the purpose of meeting truck and Illinois Waterways competition to Chicago and are nontransit rates. The interstate rates are said to be the normal basis, reflecting the general grain-rate structure.

Rates in cents per 100 pounds

To Chicago from	Intrastate	Interstate	Interstate specific
Morris, Ill	[illegible]	9.5	[illegible]
Schneider, Ind	[illegible]	8.5	[illegible]
North Hayden, Ind	[illegible]	8.5	[illegible]
Pittwood, Ill	8.5	12	[illegible]
La Salle, Ill	[illegible]	12	[illegible]
Danforth, Ill	9.5	12	[illegible]
Herbert, Ill	10	10.5	[illegible]
Ocoya, Ill	[illegible]	12	[illegible]
Oregon, Ill	[illegible]	12	[illegible]
Neponset, Ill	11.5	12	[illegible]
Cazenovia, Ill	11.5	12	[illegible]
Prophetstown, Ill	12.5	13	[illegible]

Volume of movement into Chicago over the Illinois Waterways; unpublished barge charges; and incidents connected therewith.—Of the 13,206,000 bushels of corn moving into Chicago over the Illinois

Waterways during 1939, the record shows that 13,094,962 bushels were transported by six barge lines, divided as follows:

Barge line	Number of pounds	Number of bushels [1]	Number of trips
Allied Barge Corporation	244,000,544	4,358,224.1	174
John I. Hay Co.	77,328,450	1,380,865.1	39
Lawrence Transportation Co.	3,294,850	58,836.1	7
Myers Transportation Co.	459,810	8,210.9	1
A. L. Mechling Barge Line	407,576,180	7,278,146.1	371
Waterways Transportation, Inc.	588,070	10,579.9	1
Total	733,317,914	13,094,962.2	593

[1] Based on the average weight for corn of 56 pounds per bushel.

Practically all of the corn transported in the barges of the Allied Barge Corporation, and most of that transported by the A. L. Mechling Barge Line, hereinafter called the Mechling Line, was loaded into barges at Morris or Patonville, the latter being an unincorporated community not served by rail immediately across the Illinois River from Morris.

The Mechling Line is unincorporated. It has not secured a certificate of public convenience and necessity from us or from the Illinois Commerce Commission, nor did it file rates with or make annual reports to either commission prior to the enactment of part III of the Interstate Commerce Act. It has no agreement with the respondents in this proceeding with respect to the shipment of grain beyond Chicago. The rapid growth of this line is demonstrated by the fact that the barges operated by it during 1936 were leased from others and its motive power consisted of 2 towboats, whereas at the time of the hearing its equipment had increased to 17 owned barges, 1 leased barge, and 4 towboats.

The Mechling Line did not publish its charges for transportation in tariff form prior to the enactment of part III, although it actively solicited business from all shippers of grain along the Illinois Waterways and has barged grain into Chicago from all elevators from Havana to and including Morris. Its charges for transporting grain in bargeload lots to Chicago when loaded in its own barges (as contrasted with grain loaded in barges belonging to others) are as follows:

From:	Cents
Morris, Ill.	2.75
Patonville, Ill.	2.75
Seneca, Ill.	2.75
Ottawa, Ill.	2.75
La Salle, Ill.	2.75
Peru, Ill.[1]	3.25
Hennepin, Ill.	3
Henry, Ill.	3.5
Lacon, Ill.	3.5
Chillicothe, Ill.	3.5
Peoria, Ill.	4
Pekin, Ill.	4
Havana, Ill.	4.5

[1] Temporary loading facilities.

Under its present rates this line maintains that its business is profitable. The "River Straight Bill of Lading" under which this business is handled contains the following provision:

It is understood and agreed that the carrier and the vessel or vessels do not hold themselves out as transporting cargo or towing for the general public and only transport cargo and tow as private carrier under private contract.

Notwithstanding this statement which appears in the contract of carriage, it was testified by the owner of this line that it holds itself out to handle shipments of grain for any shipper offering tonnage.

On exceptions, the Chicago protestants request that we find the Mechling Line to be a common carrier by water and that the grain transported by it to Chicago is within the traffic described in section 6 (11) (b) of the act. On argument, counsel for this line stated that he has been instructed to file its rates here as a common carrier of grain by February 1, 1941, but that the line takes the position it is not a common carrier "of everything." The evidence presented with respect to this line's common-carrier status is not supported by testimony other than the self-serving statements made by its witness. The Mechling Line filed no appearance in this proceeding, and its evidence must, therefore, be construed as gratuitous in character. On the present record the evidence for this line is conflicting and is insufficient to warrant a determination of its carrier status.

The Cooperative Allied Grain Dealers Corporation, of Morris, operates elevators on the north bank of the Illinois River at Morris and Seneca, and at the time of the hearing its grain, for the most part, was loaded into barges owned by the Allied Barge Corporation, which was organized by interests connected with the former corporation. This barge line owns four barges, each having a capacity of 30,000 bushels of grain and costing $8,500. It owns no towboats. Its barges are towed by the Mechling Line under a separate contract which provides that the rates to the Chicago terminal elevators will be 1 cent per bushel on grain except oats and 0.8 cent per bushel on oats. These rates are equivalent to 1.67 cents per 100 pounds on wheat and beans at 60 pounds per bushel, 1.79 cents per 100 pounds on corn at 56 pounds per bushel, and 2.5 cents per 100 pounds on oats at 32 pounds per bushel. It is to be observed that the towage performed by the Mechling Line on the traffic just mentioned is contract carriage and that the charges therefor are substantially lower than the charges applied on grain for other shippers.

The Cooperative Allied Grain Dealers Corporation elevator at Seneca is operated under a so-called lease with the Continental Grain Company which is, as a matter of fact, a contract of purchase. The so-called lease provides that on all grain moving through this elevator the purchaser shall pay 0.5 cent per bushel to the Continental Grain

Company, and, further, that all such grain must be sold exclusively to the latter. If any of this grain is sold to interests other than the Continental Grain Company, the lease may, at the option of the lessor, be abrogated, in which event the amount paid in is to be considered as rent rather than as an equity in the elevator.

On grain hauled to Chicago in the Allied Barge Corporation's barges (which is exclusively Cooperative Allied Grain Dealers Corporation grain), the latter allows the former 0.75 cent per bushel for the use of the barges. Based on this figure, and the total amount of corn hauled to Chicago in these barges during 1939, 4,358,225 bushels, that barge line received $32,686.68, or an amount nearly equaling the entire cost of the barges.

Neither the Allied Barge Corporation nor the Cooperative Allied Grain Dealers Corporation has ever secured a certificate of convenience and necessity from us or from the Illinois Public Utilities Commission, nor have they filed any tariffs showing rates or made any annual reports to either commission. Their barge services are not open to the public. The exclusive business of this barge line is the leasing of its barges to the Cooperative Allied Grain Dealers Corporation. Neither of these corporations has any agreement with respondents with respect to the shipment of grain beyond Chicago. It is clear that the transportation services performed by or for these corporations is contract carriage, and that neither is a common carrier.

Admittedly the Federal Barge Line is a common carrier, but this line has hauled little if any grain to Chicago from origins on the Illinois Waterways here considered. No evidence was presented as to the common-carrier status of other independent barge lines hauling grain to Chicago over the Illinois Waterways.

Under section 6 (13) (c) (now section 6 (11) (b)) of the act, we have jurisdiction to prescribe proportional rail rates on traffic which has been hauled to a port or is carried from a port by a common carrier by water. This record is replete with complexities and technicalities, and does not contain sufficient information to warrant prescribing proportional rates on traffic arriving at the rate-break points in common-carrier boats.

Board of Trade rules.—Under normal circumstances grain bought in the Chicago cash market (that is, for immediate delivery or delivery within 10 days) is always hedged, which means that a sale is immediately made on a futures market. For example, corn that is bought on the cash market in January is immediately hedged with a sale requiring delivery in May. Under the rules of the Chicago Board of Trade, the hedge requires delivery to the purchaser of billing which will entitle him to move the grain out of Chicago on the proportional rates here in issue, or, in the alternative, pay the purchaser the difference between the out-bound local and the proportional rate. Hedged

grain under a board rule must be delivered from a public elevator. Under present practice, ex-barge grain is registered with the Central Inspection and Weighing Bureau so as to engage the application of the proportional rates, but under the proposal, such registration will be denied ex-barge grain. Therefore it is claimed that it will not be possible to hedge the grain, and that if the commodity is moved out to eastern destinations it will be forced to move out under the local rates or by lake. In many instances, however, the hedge is never consummated, but instead is bought back. Under such circumstances the board rule would not be operative.

All grain sold on the Chicago market is subject under the board rule to a commission charge of 1 cent per bushel when it moves in by rail and 0.5 cent per bushel when it moves in by water, which must be paid to Board of Trade members, who are either commission men or direct buyers.

All grain moving into Chicago and sold on the Board of Trade must, according to its rules, be weighed, graded, and inspected by a sworn weighmaster and by certified inspectors under the supervision of the board, and the single charge for these three services is 0.25 cent per bushel.

In addition, the rules of the board require that on grain arriving at Chicago by boat, the shipper must bear the unloading charges. In unloading barges into elevators, certain labor is required to move the grain up to the marine leg through which it is elevated into the grain house. The charge for this service is 0.35 cent[3] per bushel and is called the trimming charge. In this respect delivery by boat differs from delivery by rail, for in the latter instance the shipper never pays for unloading a car; instead, the cost therefor is assumed by the consignee.

All of the rules of the Board of Trade mentioned in the preceding paragraphs are trade or commercial practices which have a definite bearing upon the purchase price of grain bought through this market and have been stated because of this fact, but these rules have no direct bearing whatever upon the legality of respondent's proposed schedules. (*Boren-Stewart Co.* v. *Atchison, T. & S. F. Ry. Co.*, 19 I. C. C. 120, 125.)

Chicago elevator capacity.—The elevator capacity of the Chicago market is approximately 50 million bushels of grain; the Chicago protestants in the instant proceeding control elevators having a capacity of about 32 million bushels. The public storage capacity of the Chicago elevators is approximately 25 million bushels, and all of this is controlled by the Chicago protestants. Public storage is the space in public elevators available to anyone wishing to use it. The charge

[3] Sometimes referred to as 0.38 cent per bushel.

for transfer of grain through public elevators is 1.5 cents per bushel, including 10 days' free storage. When the buyer of a hedge requires delivery of the grain, for instance, at Indianapolis, Ind., the buyer must pay an additional charge for transfer from the elevator to the car, which in that case would be 1.25 cents per bushel.

Effect of barge versus rail delivery costs at Chicago upon the producer.—Eight farmers and country elevator operators adjacent to or within trucking distance of the Illinois Waterways, who had little or no knowledge of the proportional rates east of Chicago here in issue, testified in support of protestants. The gist of this testimony is that prior to the inauguration of barge transportation on the Illinois Waterways, the prices they received for their rail grain ranged from 9 to 10 cents per bushel under the Chicago quotations, whereas today, with barge transportation available, they receive prices ranging from 5 to 7 cents per bushel under such quotations.

On the other hand, 13 farmers and country elevator operators not adjacent to the Illinois Waterways testified that when the Illinois intrastate rates on corn were reduced, they were able to move their corn through local elevators and over rail routes to Chicago in competition with the truckers, but that since the opening of the Illinois Waterways provided the cheaper barge-transportation costs to Chicago, the truckers have reversed the haul, and now truck the grain from the farms directly to the waterways.

The following table shows what the farmers actually receive for corn, using various modes of transportation to Chicago, on a Chicago bid of 55 cents per bushel.

From Morris, Ill., to Chicago, Ill	Direct river buying, using barge to Chicago	Country elevator using barge to Chicago	Trucked direct from farm to Chicago	Country elevator using 5-cent intrastate rate	Country elevator using 9.5-cent I. P. rate
	Cents	*Cents*	*Cents*	*Cents*	*Cents*
Truck cost, farm to local market	1	1	0	1	1
Local buyer expense	0.25	2	0.25	1.5	1.5
River-elevator expense	1.5	1.5	0	0	0
Freight to Chicago (per bushel)	1.75	1.75	5	2.8	5.34
Trimming charge (at Chicago)	0.38	0.38	0	0	0
Commission charge (at Chicago)	0.5	0.5	1	1	1
Weighing, grading, and inspection charge (at Chicago)	0.25	0.25	0.25	0.25	0.25
Discount, account in-bound billing not good in connection with reshipping or proportional rates east of Chicago	0	0	0.5	0.5	0
Total	5.63	6.38	7	7.05	9.08
Chicago market price	55	55	55	55	55
Costs incident to making delivery at Chicago, plus discount, where applicable	5.63	6.38	7	7.05	9.08
Price paid to farmer (per bushel)	49.37	48.62	48	47.95	45.92
Amount accruing to farmer in excess of I. P. method amount	3.45	2.70	2.08	2.03	00.00

[1] Illinois intrastate rail rate.

The Finnegan Elevator Corporation and the Finnegan Elevator Company, operating an elevator completed in 1934 at Patonville, on the south bank of the Illinois River opposite Morris, first established the practice of having the grain brought directly from the farm to the river elevator instead of handling the grain through country elevators. Most of the grain run through this elevator is transported by the Mechling Barge Line. The witness for these firms explains that prior to the inauguration of the barge service and the establishment of river elevators, an increasingly large amount of grain was being bought in this area by truckers at prices higher than country elevators located on railroads could pay, and that grain so purchased was being trucked directly to Chicago or to processors at Decatur, Ill., and other points.

These interests particularly stress the fact that grain originating at Kansas City and moving on filed rates to Chicago, which under the suspended schedules will still be able to move east on the proportional rates, may be towed alongside a barge containing grain moving on unfiled rates from the Patonville elevator which, under the proposal, will be denied the application of those rates. This, they allege, will result in unjust discrimination against Patonville grain and undue preference in favor of the Kansas City grain. In reply to this allegation, respondents point out that the rate on Kansas City grain reshipped from Chicago to Cleveland, Ohio, for example, pays 3 cents less than if it originated at Minneapolis, Minn., although the cars carrying the Kansas City and Minneapolis grain may be in the same train out of Chicago.

The Inland Waterways Corporation, operating the Federal Barge Lines, hereinafter called the barge line, is also a protestant in this proceeding. Its position is that (1) the rates which will become applicable on unregulated ex-barge traffic as a result of the proposed schedules will be excessive to the extent that they exceed the rates contemporaneously applied on ex-lake grain transported on unfiled rates; (2) the proposed rates on ex-barge traffic will be excessive by comparison with rates on ex-rail grain from the reshipping points to the same destinations; (3) application of higher rates on ex-barge traffic than on ex-rail traffic is unjustly discriminatory, and unduly prejudices the barge line; and (4) it is illegal to restrict proportional rates on grain so as to make them inapplicable on ex-barge grain unless the rates of the water carriers are on file with us.

This position amounts to an allegation that the proposed schedules will violate sections 1, 2, and 3 of the act. As to section 1, as will be later explained, the rates resulting from the proposed schedules are substantially lower than rates which we have prescribed or found not unlawful on grain within official territory. In *Ex-River Grain from*

St. Louis to the South, 203 I. C. C. 385 (petition for reconsideration denied), wherein this protestant also made the same contention as to the section 2 allegation. Division 3 found that the service in the cases of ex-rail and ex-water transportation is not made under substantially similar circumstances and conditions. Section 3 of the act is not applicable to carriers that do not come within our jurisdiction. *Nicholson Universal S. S. Co. v. Pennsylvania R. Co.*, 203 I. C. C. 637, 206 I. C. C. 563; *Ex-River Grain from St. Louis to the South*, *supra*. Under the Interstate Commerce Act, as amended September 18, 1940, section 3 (1) of part I, undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful. Part III of the act, applicable to water carriers, is substantially similar. It follows that the prejudice alleged by the barge line, even if it existed, is not unlawful. As to position (4) it is sufficient to point out that in the proceeding last cited, ex-rail rates lower than ex-barge rates were found justified.

No grain traffic moved over the barge line to Chicago from the Illinois points referred to during the years 1938 and 1939 except 2,245 tons from Pekin during 1938. This is due to the lower charge made by competing barge lines. This barge line has no common arrangement with respondents for a through route, nor has a formal arrangement been entered into with them in connection with filed or unfiled barge rates. The suspended schedules, if permitted to become effective, would not of themselves constitute such an arrangement.

The Mississippi Valley Association, a protestant in this proceeding, is said to be devoted to the economic welfare of all people in the valley. It maintains that ex-barge grain should have the benefit of reasonable proportional rates over rail routes east of the rate-break points. Its witness states that the position of the association is that growers of grain who are so located that barge transportation is not available to them, nevertheless are profiting as a result of the lower costs on the Illinois Waterways, because (1) the farmer moving his grain by water out of the Illinois Valley receives a higher price for his grain; (2) such grain has outlets at Chicago, New Orleans, or the Pacific coast, and as a result broader markets at higher prices are found than if the waterway did not exist; and (3) the remaining grain that cannot use the waterway—that must be shipped by rail—has just that much less grain to compete against, and because of this it is argued that the farmer away from the waterway is able to obtain a higher price. The instant record supports the first point, but there is no showing here that the New Orleans or Pacific coast price of grain is any different, or higher, than the Chicago price, and as to the third point the evidence shows that all grain purchased in this market is either sold on the f. o. b. or c. i. f. Chicago market price.

Upon this subject, but more particularly with respect to corn, grain interests located at Decatur, Ill., and Indianapolis, Ind., point out that because of the low barge rates into Chicago they have been unable to buy corn in the Illinois Valley. As a result they have been forced to come into the Chicago market for their corn, instead of buying direct, thus imposing on such grain the incidental charges accruing in the Chicago market.

The United States Department of Agriculture, the attorney general of the State of Illinois, and the Illinois Commerce Commission, although represented at the hearing, took no active part in the proceeding. On argument, counsel for the Department of Agriculture was more concerned with the farmer's opportunity to secure lower rates by reason of the availability of water transportation than with respondents' justification of the suspended rates or questions relating to sections 1, 2, and 3 of the act.

Grain moving into Chicago by motortrucks.—The statistics previously given show that a considerable quantity of grain received in the Chicago market is trucked in. Such grain is not, and never has been, accepted for registration nor accorded transit, and, therefore, has not been able to engage the proportional rates here in issue. As a result, the grain that has been trucked in has been consumed locally or has moved out by lake. At least one firm operating an elevator on the water but not equipped to unload barges deals largely in trucked grain. This firm is also a protestant in this proceeding. Its grain arriving at Chicago by motortrucks originates in the same area as the barged grain. Both trucked and barged grain is sold in the same consuming territory. Under such circumstances it is contended that there is no good and substantial reason why respondents unduly prefer ex-barge grain to the undue prejudice and disadvantage of trucked grain. Trucked grain as well as ex-barge grain moves on unfiled rates.

Position of the western rail lines.—These lines maintain that the purpose of establishing the intrastate rates on corn, under which transit is prohibited, was to meet unregulated barge competition. The practice of respondents in permitting transit and the application of the proportional rates east of Chicago on ex-barge traffic has had the effect of nullifying the western rail lines' efforts. In support of this fact it is shown that during the years 1935 to 1938, both inclusive, The Chicago, Rock Island and Pacific Railway Company transported over its line to Chicago from Morris, the most important barge shipping point, 480, 802, 572, and 753 carloads of corn, respectively; but that in 1939 it had, up to November 30, transported only 44 carloads.

The western rail lines also take the position that the proportional rates here in issue were never properly applicable on ex-barge traffic originating at points on the Illinois Waterways, because when they

were originally published by respondents, and later fixed by us so far as destinations in central territory were concerned, they were established as equalizing factors of the through all-rail grain-rate structure from the West to the East. As originally published, the so-called "Northwest" proportional rates from Chicago applied on grain originating at points in northwest territory which was specifically defined, and did not include any origin points in Illinois.

The western lines, supported by the respondent eastern lines, also contend that if application of the proportional rates is to be continued on unregulated ex-barge traffic, the result will be a breaking down of the established through grain-rate structure from West to East. The evidence already detailed with respect to the inability of the reduced intrastate rates on corn to accomplish their purpose in meeting the competitive barge charges supports this contention.

Counsel for the western roads also introduced as an exhibit in this proceeding the Illinois Public Utilities Act. Under that act it is provided that every public utility shall file with the Illinois Commerce Commission, and shall print and keep open to public inspection, schedules showing all rates and other charges. It has already been shown that the independent barge lines handling the bulk of this grain traffic from origins on the Illinois Waterways file no schedules showing rates and make no annual reports to the Illinois Commerce Commission. Obviously they do not consider that they are public utilities or common carriers within the meaning of that act.

Proportional and local rates from Chicago to representative eastern destinations.—The following table shows the short-line rail distances, the proportional rates under their varied applications, and the local rates on grain from Chicago to representative destinations in central and trunk-line territories.

Rates in cents per 100 pounds

From Chicago, Ill., to—	Short-line distance	Separately published rate factors				Local rate
		Trans-Mississippi (note 20)	Northwest (note 40)	Reshipping (note 45)	Proportional (note 20)	
Central territory:	*Miles*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Indianapolis, Ind	180.9	11.5	14.5	12	.....	17
Detroit, Mich	266.5	12.5	15.5	15	.....	17
Circleville, Ohio	320.7	14.5	17.5	19	.....	25
Pittsburgh, Pa	454	18.5	21.5	20	.....	28.5
Buffalo, N. Y	498	18.5	21.5	20	.....	28.5
Trunk-line territory						
Baltimore, Md	761				[1] 23	[1] 31.5
					[2] 16	[2] 24.5
Philadelphia, Pa	10				[1] 24	[1] 32.5
					[2] 16.5	[2] 25
New York, N. Y	880				[1] 26	[1] 34.5
					[2] 17.5	[2] 26
Boston, Mass	972				[1] 28	[1] 36.5
					[2] 17.5	[2] 26

[1] Domestic [2] Export

As previously stated sometime after this grain traffic began moving up the Illinois Waterways, respondents construed their schedules so as to permit application of the "Northwest" (note 40) proportional rates on traffic to central territory, and the "Proportional" (note 20) rates to trunk-line and eastern territories. It will be observed that the proportional rates from Chicago to central-territory destinations on grain originating in trans-Mississippi River territory are uniformly 3 cents less than the proportional rates applicable on traffic originating in Northwest territory, thus maintaining the equalization prescribed in *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co.*, 173 I. C. C. 86, 227 I. C. C. 795, 231 I. C. C. 130, and that if the suspended schedules are found justified, resulting in the application of the local rates, the increases in the rates to the central-territory points named *would range from* 1.5 to 7.5 cents, and to the eastern points named the increase would be uniformly 8.5 cents.

The Chicago protestants and others maintain throughout this proceeding that little or no grain would move east of Chicago on the local rates, because in their opinion such rates are unreasonably high. In support of this contention, the local rates are compared with the average revenue secured by the rail carriers from all freight handled for its average distance. We have many times found that comparisons of this character furnish no measure of the reasonableness of rates on a particular commodity. Refuting the allegation of unreasonableness, respondents point out that these local rates range from 17.3 to 25.7 percent of first class and are substantially under the level of the sixth-class rates (27.5 percent of first class) which we have found, in the reports cited in the footnote,[4] to be a maximum reasonable basis or not unreasonable or otherwise unlawful, on grain and grain products within official territory.

For comparative purposes, respondents presented figures compiled by the Central Inspection and Weighing Bureau showing that during the period from May 1 to November 30, 1939, there were received at Chicago over rail routes for registration 16,771 carloads of corn, of which 2,351 carloads (about 14 percent of the receipts) moved out on the proportional rates to central and trunk-line territories, 9,503 carloads (about 57 percent of the receipts) moved out over lake, 201 carloads moved out to other destinations, and 1,032 carloads were disposed of locally, leaving a balance on hand of 3,684 carloads. During the same period the equivalent of 7,305 carloads of corn were moved into

[4] *Indianapolis Board of Trade* v. *Baltimore & O. R. Co.*, 129 I. C. C. 675; *Grain & Grain Products*, 144 I. C. C. 497; *Valley Grain Co., Inc.*, v. *Cleveland, C. C. & St. L. Ry. Co.*, 159 I. C. C. 223, 167 I. C. C. 196; *Co-operative Elevator Co.* v. *Wabash Ry. Co.*, 192 I. C. C. 583; *Goldcamp Mill Co., Inc.* v. *Akron, C. & Y. Ry. Co.*, 195 I. C. C. 329; *Grain and Products to Chesapeake & O. Branch Lines*, 196 I. C. C. 751; and *Allen & Wheeler Co.* v. *Akron, C. & Y. Ry. Co.*, 225 I. C. C. 179.

Chicago by barge from the Illinois Waterways for registration with the bureau, of which 1,160 carloads (about 16 percent of the receipts) moved out on the proportional rates to central and trunk-line destinations, 5,183 carloads (about 71 percent of the receipts) moved out via lake, and 235 carloads were disposed of locally, leaving a balance on hand of 727 carloads. Respondents show that during the same period 792 carloads of the corn moving into Chicago over rail routes which were moved out of that market under the proportional rates to the East originated at points in the State of Illinois within the territory previously defined. Freight charges on these 792 carloads moving into Chicago were on basis of the intrastate rates which were established to meet truck and barge competition. The tariff publishing these rates specifically states that no transit privileges will be accorded. Nevertheless, the evidence shows that tonnage moving into Chicago on these rates was *registered with the Central Inspection and Weighing Bureau*, without any tariff authority therefor, and that if the commodity was reshipped to the East under the proportional rates, the western roads handling the in-bound shipment billed the shipper for the difference necessary to protect the Illinois interstate rates, in connection with which transit privileges are available.

Rules and regulations covering application of proportional rates.—The measure of the proportional rates east of Chicago and related gateways is not in issue here, that matter, so far as destinations in central territory are concerned, having been determined in *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co., supra*. In the latter report (251 I. C. C. 130), speaking with regard to the question of equalization, the following statement was made:

> Kansas City is in what is known as trans Mississippi River origin territory, and Minneapolis is in northwest territory. To most of the destination territory we required a parity of through rates from Minneapolis and Kansas City on traffic from beyond. This was accomplished by making the factors of the combination rates 3 cents higher, beyond Chicago and other related eastern gateways (the one factor through rates being in effect), on traffic from beyond Minneapolis, than on traffic from beyond Kansas City, because of the in-bound rates to Chicago 3 cents less from Minneapolis than from Kansas City.

In *Peoria Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 55 I. C. C. 42, 50, reference was made to *State of Iowa* v. *Baltimore & O. R. Co.*, 46 I. C. C. 595, 599, wherein it was found that proportionals which vary with points of origin or destination were not unreasonable, unduly prejudicial, or otherwise unlawful.

In the schedules here considered which are held in force by reason of the suspension, the rules relative to the application of the proportional rates east of Chicago, Peoria, and other related gateways to destinations in central territory are somewhat different from those applying in connection with the proportional rates to destinations in

trunk-line territory. For example, using the Chicago gateway, there are three separate levels of proportional rates to central-territory destinations, which are designated respectively, "Trans-Mississippi" "Northwest (See Note 40)," and "Reshipping (See Note 45)," in addition to the local rates applying from Chicago proper. On the other hand, the schedules applying on domestic and export grain from Chicago to trunk-line destinations carry only one proportional application (that is, note 20) in addition to the local rates. In appendixes II and III to this report there have been set forth the relevant portions of notes 40, 45, and 20.

For the purpose of engaging the application of the proportional rates, all of the notes previously referred to specifically provide:

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission

The rate tariffs here considered also publish the following provisions, applicable to central territory and trunk-line territory respectively, hereinafter called the limitation rules:

APPLICATION OF PROPORTIONAL RATES.

Proportional rates named herein, which by their terms are limited in their application to traffic destined to, or originating at, specific points or territories including rates which are published for application on traffic "from beyond" or "when destined beyond," are applicable only when the entire movement is performed by rail carriers or water-and-rail carriers, under rates lawfully on file with the Interstate Commerce Commission.

The foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic. (C. F. A. No. 2191.)

APPLICATION OF PROPORTIONAL RATES.

Proportional rates, as named herein, which by their terms are limited in their application to traffic originating at specific points or territories, including rates which are published for application on traffic "from beyond," are applicable only when the entire through movement is performed by rail carriers or water and rail carriers, under rates lawfully on file with the Interstate Commerce Commission, or State Commissions.

The foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex river or ex-lake traffic or on traffic forwarded by river, ocean or lake from the port.

At a meeting of the representatives of the eastern lines held during the month of November 1934, the question was presented whether these proportional rates applied on ex-barge traffic, and it was decided that they had no such application. On January 18, 1935, another meeting was held, and the action previously taken was reversed.

It was the position of the protestants and of certain of the respondents on the record that the second paragraphs of the rules above quoted not only nullify the provisions of the first paragraphs, but render

inapplicable any rule or application in the rate tariffs, or any provision in the transit tariff, which would otherwise have the effect of prohibiting the application of these proportional rates on ex-barge traffic originating on the Illinois Waterways.

An examination of the rate tariffs shows that the second paragraphs of these rules were first published contemporaneously with the inauguration of the movement of grain in barges over the Illinois Waterways.

The Board of Trade view, concurred in by protestants and certain respondents, is that when the limitation rules were amended so as "not to affect any rates now published carrying provision that such rates are applicable" on ex-river or ex-lake traffic, this action amounted to an exemption, not only bringing about uniform application on both ex-river and ex-lake traffic, but also nullifying that portion of the notes explaining the application of the proportional rates (shown in appendixes II and III) reading, "that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination." It appears that the latter provision has always been waived on ex-lake traffic, and that it has been waived on ex-river traffic since such traffic developed. But it is maintained that the modification of the limitation rules did not nullify that portion of the notes in the rate tariffs subjecting such rates to the "transit rules and regulations" lawfully on file with us. This position is taken because the transit rules must be observed to provide the necessary policing and keeping of the records and to see that proper in-bound billing is surrendered so as to engage the application of the out-bound proportional rates. As to a provision in the transit tariff that "shipments delivered to transit houses will be subject to full tariff rates of in-bound carriers," it is also contended that the ex-river exemption in the limitation rules is sufficient to warrant disregard of this provision; and that a transit rule to the effect that "the through rate to be applied shall be the lawfully published rate through from the original point of shipment to final destination in effect at the time of initial shipment from the origin" cannot possibly change the value of the rate that is published in the tariff.

Concisely stated, the contention of these interests seems to be that to the extent that the rate or transit tariffs place restrictions upon the character of the rates, they have no application on ex-river grain, because of the modification of the limitation rules; but that in all other respects the notes published in connection with the application of the proportional rates, and the transit rules must be strictly observed.

Unquestionably, the first paragraph of the limitation rules is clear and unambiguous, is in accord with section 6 (7) of the act, and is

in harmony with our views as expressed in many prior reports. As early as May 10, 1909, in *Kansas City Transp. Bureau* v. *Atchison, T. & S. F. Ry. Co.*, 16 I. C. C. 195, 201, we said:

> A proportional rate means a part of or a remainder of the through rate or it means nothing at all, and in a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination. [Cited with approval in *Hocking Valley Ry. Co.* v. *Lackawanna Coal & I. Co.*, 224 Fed. 939.]

In *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 63 I. C. C. 185, 188, decided June 15, 1922, division 3 said:

> We have in numerous cases considered reshipping and proportional rates by whatever name called, and it is well settled that they are inseparably connected with and form parts of the rates applying to through transportation. [Cited with approval in *Lorabee Flour Mills Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 148 I. C. C. 5, 9; and *Baptiste Bay Co.* v. *Chicago, B. & Q. R. Co.*, 157 I. C. C. 626.]

And in *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, 575, decided July 29, 1939, we further clarified the former expressions and said:

> We have found that a proportional rate is one which applies to a part of a through transportation *which is entirely within the jurisdiction of the Interstate Commerce Act*, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. [Emphasis supplied.]

The only traffic excepted by law from this requirement is that subject to section 6 (11) (b) of the act, which is limited to common carriers by water. It is elemental that a proportional factor is but a part of a through rate. It follows that the proportional rate and the rate with which it is combined to make a through rate must be on file with us. Otherwise, as is clearly demonstrated in this proceeding, regulated carriers, by the simple expedient of publishing lower than local rates and designating them "proportional," will be free to defeat the primary purpose of the act, which is to cut up by the roots every form of discrimination and inequality. (*Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467.) It is also significant that the unregulated barge charges may be changed with or without any notice.

The parties cited several cases in support of their contention that proportional rates may be applied on traffic coming from or going beyond a reshipping point by other than common carriers by water. On argument, the question arose as to the justification for lower rates on import traffic arriving at the port by unregulated carriers than on domestic traffic, and in this connection reference was made to *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, wherein the court, among other things, held in effect that we should

have taken into consideration the ocean transportation up to the port when deciding the lawfulness of import rates lower than contemporaneous domestic rates. Pertinent to such admonition, Justice Frankfurter in *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, used the following language:

> Constitutional provisions are often so glossed over with commentary that imperceptibly we tend to construe the commentary rather than the text.

The language of section 6 (11) (b) is plain and unambiguous. Its application is confined to proportional rail rates on traffic brought to or carried from the port by a common carrier by water. In *Cast Iron Pipe and Fittings*, 174 I. C. C. 459, at page 471, division 5 concluded that proportional rates which are intended to apply beyond the ports not only by common carriers by water but also by private carriers do not fall within the definition of a proportional rate as set forth in section 6 (13) (c). We agree, with the further observation that the section alluded to can have no application whatever except in connection with common carriers by water. Since the second paragraph of the limitation rules is not restricted to apply in connection with common carriers by water, it finds no support in the act, and we can give it no weight in the determination of the issues here involved.

In respondents' reply to protestants' exceptions it is admitted that this limitation rule can in no sense be regarded as authority for the application of any certain rate levels.

Irregularities in registration of billing.—It has already been pointed out that on carload shipments of corn moving into Chicago on the intrastate rates, transit is prohibited. The Chicago protestants in this proceeding submit such intrastate rail billing, which the Central Inspection and Weighing Bureau accepts for registration. Notwithstanding the claim that when such registered tonnage moves out on the proportional rates, the difference between the in-bound intrastate and the interstate rates should be collected, there is no specific tariff authorization for this practice. The instant record is clear on this point. This is a plain violation of section 6 (1) of the act, which requires, among other things, that every common carrier subject to the provisions thereof shall file with us schedules showing separately all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the shipper, or consignee. The practice should be discontinued or an appropriate rule published.

In support for the practice above explained, respondents, on exceptions, cite *Swift & Co. v. Atchison, T. & S. F. Ry. Co.*, 227 I. C. C. 579, which we find to be plainly distinguishable. In that proceeding, 227 I. C. C.

at page 585, it was pointed out that the transit rules did not preclude application of through rates in instances where in-bound shipments to transit points moved intrastate, whereas in the proceeding now considered, the rate tariff publishing the in-bound intrastate rates to Chicago specifically prohibits transit arrangements. Since the corn moving into Chicago on intrastate rates is not available for transit, Chicago is its final destination. It follows that the local rate beyond Chicago applies in the absence of a tariff provision preserving the fictional through movement. *Boynton Hay Co.* v. *Chicago, B. & Q. R. Co., supra.*

Appendix IV shows three so-called barge freight bills on grain moving into Chicago and a representative in-bound lake bill of lading. The disposition of the out-bound tonnage in connection with each in-bound shipment is also shown. The first bill covers a shipment which was transported from La Salle to Chicago in a barge of the John I. Hay Company. It does not disclose the name of the commodity transported but shows the total amount paid in, based on a charge of 1.5 cents per bushel (equivalent to 2.68 cents per 100 pounds). It will also be observed that the transit shipping directions do not show the "Rates Paid in," required by the rate and transit tariffs. On the other hand, where a shipment moves into Chicago by rail, the shipping directions always show the rate on the in-bound tonnage which was registered with the Central Inspection and Weighing Bureau.

The second bill covers a representative in-bound freight bill on a shipment of oats and beans made by the Cooperative Allied Grain Dealers Corporation from Morris to Chicago in a barge belonging to the Allied Barge Corporation which was towed by the Mechling Barge Line. As previously stated, the evidence shows that the Allied Barge Corporation is in the sole business of leasing its barges to the Cooperative Allied Grain Dealers Corporation. It is not understood how a bill for transportation charges could be issued in the name of the Allied Barge Corporation, which is not in the transportation business. It is not satisfactorily explained on the record, on exceptions, or at oral argument under what theory of transit such a bill was accepted for registration by the bureau.

The third bill shows a paper which was made out in the offices of the Norris Grain Company, the consignee, which was accepted by the Central Inspection and Weighing Bureau as a freight bill covering a shipment of corn which moved in a Mechling barge from Chillicothe to Chicago. This tonnage was registered by the bureau notwithstanding the fact that the bill does not show the charge or amount paid in and is merely endorsed "Prepaid," although it is admitted that the charges were not paid when the document was registered. This is said to be the general practice of the Norris Grain Company.

The appendix furthermore shows a "Lake Grain Bill of Lading" covering a shipment of rye transported from Duluth to South Chicago which was registered by the bureau, although such registration is not necessary under the rules of the transit tariff.

Interpretation of rate tariffs (Notes—to central territory).—All of the present notes in these schedules provide in part that the proportional rates will apply on grain reaching—

> the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point

and the notes in the proposed schedules read substantially the same, except that the words "or water" are eliminated. In addition to maintaining at the hearing that the limitation rules permit application of the rates here in issue, the parties also maintain that ex-barge traffic originating on the Illinois Waterways complies with the clause which has just been quoted. It has already been explained that in certain instances the in-bound billing on this ex-barge traffic fails to show any rate or charge whatever. Through long custom and usage, freight bills are issued by carriers and show among other things the name of the shipper and consignee, the origin and destination, the name of the commodity shipped, its weight, the rate or charge, and whether the charges were prepaid or collect. The papers covering the in-bound barge movement are deficient as freight bills "or like documentary evidence" in that in many instances they are made out by the consignee, they do not show the name of the shipper, some fail to name the commodity, the rate or charge for the barge transportation is not always shown, and in some instances the bills are marked "prepaid" although this is not a fact. The papers filed as in-bound billing on ex-barge traffic, which were registered by the Central Inspection and Weighing Bureau, may not properly be considered as freight bills or like documentary evidence as required by these notes.

We construe the words "or water" transportation lines appearing in all of these notes (which words have been eliminated in the proposed schedules) as having reference only to water transportation lines filing rates for such transportation with us, such, for example, as the Federal Barge Lines, the Illinois River Packet Company, or the Spring Lake Packet Company. This interpretation is based on the mandatory provision of section 6 (7) of the act that no carrier may engage or participate in transportation unless the rates, fares, and charges have been published and filed. Clearly it would be difficult if not impossible for us to determine the lawfulness of a proportional or reshipping rate if the other factor of the through rate were not filed here and within our jurisdiction. Therefore, without legislative authority, respondents cannot defeat their own local rates by publication

of so-called proportional rates, or rates in the nature of proportional rates, for use in connection with unpublished rates over which we have no jurisdiction.

All of the present and proposed notes provide "that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to destination." It is obvious that if the in-bound rate is not published, filed, and shown on the registered freight bill, as is the case here, there would be no way by which respondents could determine whether the legal rate had been applied. Although the fourth section of the act does not apply to unregulated water carriers, the evidence here shows that the application of the barge rates to Chicago plus the rail proportionals beyond bring about evasions of the principles rather than violations of that section. For example, such combinations result in lower through charges to the Atlantic seaboard than the local rail rates to the same destinations from intermediate origin points on: (1) Domestic grain from all points in central territory (Chicago and east) west of a line drawn from Bay City, Mich., through Jackson and Sturgis, Mich., and Kendallville, Fort Wayne, Marion, Westville, Indianapolis, Greensburg, Ind., to Aurora, Ind.; (2) export grain from all points in central territory (Chicago and east) west of a line drawn from Atkins, Mich., through Oxford, Ann Arbor, Hanover, and Pittsford Junction, Mich., and thence along the Ohio-Indiana State line to the Ohio River; and (3) export traffic of barley, corn, oats, rye, and wheat from all points in central territory (Chicago and east) west of a line drawn from Painesville through Lordstown to East Liverpool, Ohio.

The application of the proportional rates to ex-lake grain, so far as this record shows, does not result in similar evasions.

The history of central territory note 40 (or a corresponding note) shows that from March 15, 1913, to June 28, 1935, at least as to certain lines, the "Northwest" proportional application out of Chicago on grain originating at points in Wisconsin, the Upper Peninsula of Michigan, and points west of the Minnesota-Wisconsin State line applied on shipments moving all-rail as well as "On shipments which arrive by boat lines at * * * Chicago, * * * *originating at any of the points in the above defined territory.*" Obviously this application could not apply on grain originating at any Illinois points.

The evidence shows that when grain began moving to Chicago on the Illinois Waterways, respondents first decided that no proportional application should apply on the ex-barge traffic. Upon further consideration, on January 18, 1935, their attitude was reversed. Thereupon the shippers and carriers questioned whether the Trans-Mississippi, the reshipping (Illinois), or the Northwest application to ex-

tral territory should be used. Different lines applied different applications, and to establish uniformity it was finally decided that the note 40, "Northwest" application should apply exclusively. Therefore, effective June 28, 1935, in an agency tariff, the first paragraph of note 40 to central territory was modified to read "Northwest Territory (as described below), *or as otherwise stated*" [emphasis supplied]; and the "otherwise stated" provision was added, reading: "On shipments which arrive by Boat Lines at Chicago * * *."

Effective August 25, 1935, the first paragraph of note 45 to central territory, which is the normal note covering grain originating in the State of Illinois, was amended in part to read "(except Illinois grain moving via water transportation line.)" Note 45 continues to apply on grain from points in the State of Illinois when the traffic originates on a rail line. This exception effectively blocked the application of note 45 on Illinois grain moving on the Illinois Waterways. In the proposed schedules, note 40 restores to all purposes and effect the application as published from 1915 to 1935.

From the above explanation it is clear that what respondents here propose to do is to clarify schedules which have been the subject of considerable controversy. The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois. See *Corn Grits from Kankakee, Ill., to Battle Creek, Mich.*, 237 I. C. C. 413). If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain-rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore. Though the proposed schedules leave much to be desired, they are a step in the right direction.

Interpretation of rate tariffs (Notes—to trunk-line territory).—The notes under which the proportional rates to trunk-line territory are made applicable are substantially the same as those covering the application to central territory, and are interpreted in like manner, with three exceptions, namely:

1. Note 20 to trunk-line territory provides, among other things, that the local rate from the shipping point must be observed as a minimum, but the provision is modified so that it applies only when the entire movement is "via rail," which restriction is not found in the notes to central territory. The words "via rail" were added in 1924, and were evidently used to comply with the mandatory requirements of the long-and-short-haul provision of section 4 of the act so far as rail shipments are concerned; but when a movement is partly by water (on unfiled rates) and partly by rail, the principle of this part of section 4 is [illegible] C. C.

evaded. This clearly results in a discrimination against all-rail movements and in favor of water-rail movements.

2. Note 20 (to trunk-line territory) at present, and both note 20 and note 40 (to central territory) as proposed, specifically provide that the proportional rates will apply on ex-lake traffic, and, further, that such rates will apply as of the date shipments leave the reshipping points. Clearly under this provision there is no need to resort to a transit fiction, and, therefore, it is unnecessary to refer to any transit tariff. On the other hand, the present notes 20 and 40 contain no specific provision whatsoever for ex-barge traffic. The issue in this proceeding, as already shown, relates entirely to the proposal to eliminate the application of proportional rates on ex-barge traffic moving on unfiled rates; it does not involve ex-lake traffic. The ex-lake rates are discussed herein merely for the purpose of showing the differences between the central territory and trunk-line territory notes.

3. Although both note 20 and note 40 at present provide for the application of the proportional rates on shipments arriving "via a rail or water transportation line," note 40 further states that it "will only apply on such traffic when originating at points in Northwest Territory (as described below), *or as otherwise stated*." [emphasis supplied] which is subsequently defined "on shipments which arrive by Boat Lines at Chicago." Neither the present nor the proposed note 20 carries the two latter quotations. The proposed note 40 omits these quotations.

The Federal Barge Lines alleges that discrimination, prejudice, and preference will result if the application of the proportional rates is to continue on ex-lake traffic and to be discontinued on ex-barge traffic. In *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 524, it was stated:

> To bring a difference in rates within the prohibition of section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services by their values, or by other transportation conditions.

In *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, in determining a question of alleged discrimination claimed to result through denying proportional rail rates out of the reshipping point on ex-river grain moving into that point on unfiled rates while continuing to apply proportional rates on ex-rail grain, division 3 said, on page 390:

> It does not appear that respondents' proposal would be unjust to any shipper. The service in the transportation of the ex-rail and ex-water traffic is not under substantially similar circumstances and conditions. Proportional rates are factors

of through rates and such factors may differ with differences in origins or with differences in the character of transportation to the point from which the proportional factors apply.

It is asserted by protestants that the weight of authority is against the principle above stated, citing many of our reports and decisions of the United States Supreme Court as well as certain decisions of the English courts.[5] These same decisions were cited in a petition of the Inland Waterways Corporation, operating the Federal Barge Lines, for rehearing and reconsideration in the report from which the above quotation is taken, and after review by the entire Commission that petition was denied.

All of the suspended notes in the rate tariffs provide: "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission." The effect of this provision, under well-accepted principles, is to incorporate all of the transit rules in the rate tariffs. Certain respondents and protestants contend that the language above quoted intends only that the "rules and regulations" relating to policing, and not all of the rules contained in the transit tariff, shall be used in connection with the proportional rates here considered. These "rules and regulations," according to these interests, do not specifically authorize transit. This contention cannot be sustained because, among other things, each of the rate tariffs also publishes an omnibus rule similar to that shown in the footnote[6] which specifically authorizes transit. Certainly the language used in the notes—"These rates are subject to transit rules and regulations"—cannot be construed as a "specific provision" contrary to the omnibus rule. Furthermore, the transit shipping directions issued for every car out-bound from Chicago carries a shipper's certificate reading "This is to certify that the tonnage listed under inbound is applicable to the commodity forwarded as provided" in the transit tariff, in addition to specific authorization by the Central Inspection and Weighing Bureau, as shown in appendix IV.

Counsel for respondents on oral argument made the following statement:

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[5] *Great Western R. Co. v. Sutton*, L. R. 4 H. L. 226; *Evershed v. London & N. W. R. Co.*, L. R. 3 App. Cas. 1029, 5 Eng. Rul. Cas. 351; *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.*, L. R. 11 App. Cas. 97, 6 Eng. Ry. & Co. Traf. Cas. 133, and 4 Eng. Ry. & C. Traf. Cas. 437.

[6] "In the absence of specific provisions in this tariff to the contrary, shipments transported under this tariff will be entitled to such allowances and privileges and subject to such charges, rules and regulations of originating carriers parties to this tariff, for property while in their possession, and of any intermediate or delivering carriers parties to this tariff, for property while in their possession, as are provided in tariffs lawfully in effect and on file with the Interstate Commerce Commission as to Interstate Traffic * * * for: * * * Transit Privileges."

We are not talking about transit privilege. We, out of Chicago, and east of Chicago, are only concerned with determination of the proper rate level to apply to the case, and there is a vast distinction, and I am sure the Commission is very familiar with it, between what we term as transit and what we term that movement through a rate-break market. In all the various rate cases this difference between the application of a transit provision and a through rate, and the application of a sum of proportional rates, and what may be done in a rate-break market has been thoroughly and clearly considered, and touched on.

This is the first time throughout this proceeding that an inference has been made suggesting any difference between transit on a through rate and transit on a sum of proportional rates through a rate-break market. We have in other proceedings pointed out the similarity between transit under joint through rates and transit at rate-break markets on combination rates. (See *Grain and Grain Products*, 215 I. C. C. 83, 90). Tariffs carrying into effect the rates prescribed in the proceeding just cited specifically authorize transit at rate-break markets. The evidence here shows that all of the ex-barge grain moves into the rate-break point and passes out of the possession of the in-bound carrier. Therefore its transportation has ceased, and the through movement may not be revived except through the fiction of transit.

The Chicago protestants maintain that the shipments here considered were not transited in the narrow sense but rather in the broad sense, which they claim would cover ex-barge-rail grain. This broad sense of transit, being a hybrid, partakes of some of the attributes of transit (policing rules, storage, treating, etc.) and some of the attributes of nontransit (no continuous through movement in fact or fiction). The novel "broad transit" theory must be rejected, because in the absence of a fictional bridge to preserve the continuity of movement, the only lawful rates to apply beyond the rate-break markets are the local rates. There can be no middle ground. *Red River Oil Co.* v. *Texas & P. Ry. Co.*, 23 I. C. C. 438, 446; *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, *supra*; and *Boynton Hay Co.* v. *Chicago, B. & Q. R. Co.*, *supra*.

Interpretation of the transit rules.—We have consistently applied the principle that transit arrangements rest upon the fiction that the incoming and outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination. *Central R. Co. of New Jersey* v. *United States*, 257 U. S. 247. Under transit, there is a movement of a like unit of a particular commodity or its equivalent over a through route at a through rate from point of original shipment to point of ultimate destination. In *Baltimore & O. R. Co.* v. *United States*, 24 Fed. Supp. 734, it was said:

A "transit" is a stop-over privilege granted by a carrier, by which a break *de facto* in the continuity of carriage of goods is disregarded, and two legs of a journey are treated as though they were covered without interruption.

Insofar as this report is concerned, the principal transit rules involved in the applicable tariff are for convenience reproduced in appendix V.

Rule 61 is the cardinal rule in the transit tariff, and is the foundation upon which the fiction of transit rests. It unquestionably requires application of the lawfully published through rate.

Rules 7 and 11 require in clear and unambiguous language that the transit house, and not the Central Inspection and Weighing Bureau, must maintain records showing, among other things, the method of transportation used in-bound and out-bound, as well as whether the grain is transit or nontransit.

Rules 15 and 19 specify that shipments delivered to transit houses will be subject to full tariff rates of in-bound carriers, and require that the in-bound carriers' paid freight bills or boat manifests covering shipments subject to these rules shall be recorded with the Central Inspection and Weighing Bureau. Considering all of the provisions in the applicable tariffs, rules 15 and 19 must be construed to mean paid freight bills or boat manifests covering shipments moving under rates lawfully on file with us. (See section 6 (7) of the act.)

Rule 39 provides, first, that the Central Inspection and Weighing Bureau shall have access at all times to transit houses and records, and that it shall be its duty, among other things, (*a*) to cancel freight bills for like commodities in excess of the commodities in the house; (*b*) to keep book records of all in-bound freight bills and boat manifests; and (*c*) to insert on the transit shipping directions and in-bound freight bills the through rate, divisions, or proportional or re-shipping rate properly applicable. In the light of rules 15, 19, and 61, rule 39 can only be construed as affecting freight bills and boat manifests covering shipments moving in-bound and out-bound under rates lawfully filed with us.

It is clear that rule 39, when read with the rules referred to above, is sufficient, if complied with, to enable the Central Inspection and Weighing Bureau to fulfill its function of supervising transit and insuring assessment of the lawful rates and charges without assuming the burden of keeping nontransit billing records. Transit is mutually beneficial to carriers and shippers. Therefore, sharing the burden of keeping transit records cannot be said to be unreasonable. *Millsaps Cotton Co.* v. *Director General*, 62 I. C. C. 26; *Folding Furniture Works, Inc.* v. *Minneapolis, St. P. & S. S. M. Ry. Co.*, 227 I. C. C. 159.

Manifestly the transit houses, as well as respondents, handling this ex-barge grain on unfiled rates, cannot comply with the transit rules.

Consequently such grain is not entitled to any transit arrangement, and the movements in and out of the rate-break markets are separate and distinct. Once let it be conceded that the in-bound and out-bound movements are separate and distinct, the impropriety of applying any rates other than the regularly established local rates is obvious. *Red River Oil Co.* v. *Texas & P. Ry. Co., supra.*

Having determined herein that ex-barge grain moving on unfiled rates is not entitled to transit, it must follow that the application of any rates other than the regularly established local rates was and is illegal. The outstanding undercharges should be collected.

At the hearing, respondents and the Chicago protestants admitted that transit was necessary in order to engage the out-bound proportional rates. On exceptions or at oral argument these interests shifted their position, denying the necessity of transit. In addition, they contended at the hearing that the second paragraphs of the limitation rules previously quoted nullify any provisions which would otherwise prevent the use of these proportional rates on ex-barge traffic. Subsequently this contention was abandoned.

The evidence shows that in the past, in order to obtain the traffic, respondents have applied certain provisions of their schedules and overlooked other provisions, and that the protestants, in their interpretation of the schedules, emphasize favorable and brush aside unfavorable provisions. Practices of this character are indefensible. Where there is no ambiguity in the words of a tariff there is no room for construction. *H. C. King & Sons, Inc.*, v. *Michigan Central R. Co.*, 172 I. C. C. 477, 480, citing *United States* v. *Wiltberger*, 5 Wheat. 76, 95, 96. Shippers are bound by the words employed in a tariff, and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to a contrary construction. *Hill Motor Car Co.* v. *Michigan Central R. Co.*, 197 I. C. C. 259. To now conclude that the suspended schedules should be found not justified would, in effect, be recognizing a common arrangement between the barge lines and the rail carriers for a continuous through route, despite the fact that the evidence definitely shows none exists. A common arrangement cannot be inferred. *Proportional Grain Between Federal Barge Line Ports*, 225 I. C. C. 62, 69, citing *United States* v. *Munson S. S. Line*, 283 U. S. 43.

The application of the proportional rates here in issue on ex-barge grain has already broken down a portion of the Illinois grain-rate structure to Chicago, and an imminent break-down of the grain-rate structure east of Chicago is also indicated by the evidence. Tariffs on file here[7] show that during the pendency of this proceeding the

[7] Supplement 41 to C., I. & L. Ry. tariff I. C. C. 4559; supplement 60 to N. Y. C. R. R. tariff I. C. C. L. S. 1939, among others.

rates on corn have been substantially reduced within the State of Indiana, as well as from Indiana to Chicago and to certain stations in Ohio.

In *Boone* v. *United States*, 109 Fed. (2d) 560, the United States Circuit Court of Appeals (Sixth Circuit) found, among other things, that on shipments of corn moving from Chicago over the Federal Barge Lines to Memphis, Tenn., on unfiled rates, thence reshipped by rail to interstate destinations in the South, that the flat (local) rates beyond Memphis were applicable, and that the published proportional rates for this portion of the movement did not apply.

We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates, and find that the schedules under suspension are not shown to be unlawful. An order will be entered vacating the order of suspension, and discontinuing this proceeding.

ALLDREDGE, *Commissioner*, dissenting:

I am unable to agree with the conclusions of the report.

In the first place, I think the finding that the proportional rates in question have never been applicable on grain moving initially by barge to Chicago and other points mentioned is not properly within the scope of the issues in this proceeding. The issues directly presented here are limited to the lawfulness of the proposed rates, not of respondents' rates and practices at the present time or in the past. Nevertheless, the greater part of the report is given over to a discussion of the latter question. But if the relevancy and materiality of the finding should be granted or established, I think it is still without adequate support.

Furthermore, we are unable to determine the applicability of section 6 (11) (b) because the record is not sufficient to permit of a definite conclusion as to whether or not the barge lines occupy the status of common carriers. But a finding relating to the applicability of rates cannot be predicated upon a defect in the record.

The findings are also self-contradictory. If the proportional rates were never applicable on the traffic under consideration, how then can we proceed consistently to find on this record that their cancelation is justified? I agree that respondents' tariffs are subject to criticism. They are in a state of confusion and uncertainty. The record, however, is lacking in evidence sufficient to justify a finding that the proportional rates have never been applicable on the traffic considered, thus calling for the collection of large sums of money as undercharges. Such a finding, in practical effect, is equivalent to an award of damages and should therefore rest upon evidence as definite and certain as is required when such an award is affirmatively made.

Another important error in the report as I view it concerns the construction and application of section 6 (11) (b) of the act. This provision was a part of the Panama Canal Act which in express terms was intended to enlarge our jurisdiction rather than to restrict it. That act is addressed to the Commission, however, and not directly to the carriers. Section 6 (11) (b) applies only to the first step in the process of rate-making or rate regulation, namely, the establishment or initiation of rates. It does not limit our jurisdiction under other provisions of the Interstate Commerce Act to regulate such rates after they are once established. In this instance the rates under review were established by the carriers and they are seeking to supersede them with other rates of their own making. In my judgment we have ample authority over the rail rates under consideration.

The evidence justifies the finding in the report that the proposed rates would not be unreasonable, but I am of the opinion that they are violative of sections 2 and 3 of the act. If the suspended schedules should become effective the situation would then be that the present proportional rates would continue in effect on grain brought to Chicago by rail and by lake vessel but the higher local rates would apply on grain brought in by barge over the Illinois Waterways. In considering whether or not there is a violation of section 2, the question is whether the rail haul to which the proportional rate applies is "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" in view of the fact that the prior hauls may be by rail, by barge on the Illinois Waterways, or by lake vessel. In other words, in arriving at conclusions concerning the claimed violation of section 2 in respect of the proportional rates, may the difference in the prior transportation be taken into consideration? The view taken in the report that it may finds support in the decision by division 3 in *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, upon a state of facts substantially the same as here considered. *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197 (the *Import Rate case*) also lends support to this theory, but a different view was taken in subsequent decisions. *Wight* v. *United States*, 167 U. S. 512, *Interstate Commerce Commission* v. *Delaware L. & W. R. Co.*, 220 U. S. 235, *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 225 U. S. 326, *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57, *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. Likewise, in *Chattanooga Packet Co.* v. *Illinois Central R. Co.*, 33 I. C. C. 384, it was held that the application of local rail rates north of the Ohio River on traffic moving by complainant's steam-

boat line south of the river, and of lower proportional rail rates when the movement south of the river was by rail, was violative of section 2. This decision was followed by division 4 in *Raw Sugar, New Orleans to Gramercy and Reserve, La.*, 206 I. C. C. 231. See also *Restriction of Proportional Rates on Cotton*, 161 I. C. C. 113, *Ex-River Grain and Grain Products to Mississippi Valley*, 177 I. C. C. 206, *Inland Navigation Co. v. Wabash Ry. Co.*, 43 I. C. C. 588. It will be seen therefore that the great weight of the precedents is contrary to the viewpoint of the report on the application of section 2.

The premises considered, we should require the cancelation of the suspended schedules.

APPENDIX I

Grain receipts at Chicago[1]

Mode of in-bound transportation	Corn	Wheat	Oats	Soybeans
Year 1932	*Bushels*	*Bushels*	*Bushels*	*Bushels*
Lake		192,000		
Illinois Waterways				
Rail	70,760,000	13,689,000	28,222,000	
Truck	132,000	17,000	24,000	
Year 1933				
Lake				
Illinois Waterways		3,209,000		
Rail	28,000	99,000		
Truck	91,432,000	10,037,000	20,941,000	
	1,409,000	98,000	220,000	
Year 1934				
Lake				
Illinois Waterways		1,231,000	2,536,000	
Rail	173,000	981,000		
Truck	54,206,000	21,437,000	11,787,000	
	1,121,000	134,000	80,000	
Year 1935				
Lake				
Illinois Waterways	3,623,000	3,911,000	719,000	
Rail	727,000	961,000	170,000	
Truck	27,841,000	16,727,000	16,591,000	6,449,000
	783,000	902,000	185,000	1,000
Year 1936				
Lake				
Illinois Waterways	767,000	2,876,000		
Rail	1,299,000	437,000	37,000	28,000
Truck	57,208,000	19,808,000	21,819,000	8,772,000
	1,369,000	301,000	135,000	47,000
Year 1937				
Lake				
Illinois Waterways	118,730,000	963,000	140,000	
Rail	2,019,000	2,113,000	396,000	97,000
Truck	45,811,000	34,777,000	23,903,000	8,099,000
	177,000	253,000	25,000	12,000
Year 1938				
Lake				
Illinois Waterways	92,000	699,000		
Rail	10,270,000	7,57,000	995,000	355,000
Truck	122,878,000	28,102,000	24,014,000	10,633,000
	2,027,000	481,000	65,000	181,000
Year 1939				
Lake				
Illinois Waterways		211,000		
Rail	13,206,000	1,977,000	837,000	1,076,000
Truck	65,771,000	24,142,000	20,987,000	18,486,000
	5,005,000	470,000	122,000	336,000

[1] Figures furnished by the Chicago Board of Trade.

[2] Includes 14,883,000 bushels from Argentina, 3,236,000 bushels from South Africa, 198,000 bushels from Yugoslavia, and 64,000 bushels from Hungary, total 18,443,000 bushels.

Grain (also flour) out of Chicago

Mode of transportation	Corn	Wheat	Oats	Flour	Soybeans
Year 1932	*Bushels*	*Bushels*	*Bushels*	*Barrels*	*Bushels*
Lake	40,626,000	5,908,000	16,107,000	1,274,000	
Rail	6,981,000	11,317,000	8,647,000	3,918,000	
Year 1933					
Lake	37,279,000	6,959,000	6,779,000	1,100,000	
Rail	14,493,000	9,323,000	10,798,000	4,348,000	
Year 1934					
Lake	23,947,000	11,749,000	1,849,000	1,075,000	
Illinois Waterways			12,000		
Rail	15,380,000	6,262,000	11,528,000	4,958,000	
In store and afloat:					
At first of year	21,087,000	4,427,000	4,098,000		
At end of year	10,382,000	5,802,000	3,155,000		
City consumption and unaccounted for	26,878,000	4,394,000	1,937,000		
Year 1935					
Lake	516,000	5,481,000	615,000	1,208,000	1,558,000
Illinois Waterways		25,000	111,000		
Rail	14,359,000	9,014,000	10,835,000	5,330,000	421,000
In store and afloat:					
At first of year	10,382,000	5,802,000	3,155,000		
At end of year	2,417,000	9,122,000	6,257,000		
City consumption and unaccounted for	26,060,000	3,861,000	3,001,000		
Year 1936					
Lake	9,549,000	9,071,000	824,000	1,515,000	1,921,000
Illinois Waterways		145,000			
Rail	15,784,000	11,566,000	17,091,000	5,911,000	2,347,000
In store and afloat:					
At first of year	2,417,000	9,122,000	6,257,000		
At end of year	4,479,000	7,483,000	8,155,000		
City consumption and unaccounted for	33,108,000	4,359,000	2,174,000		
Year 1937					
Lake	7,079,000	19,254,000	4,803,000	718,000	1,282,000
Illinois Waterways	125,000		40,000		
Rail	22,823,000	12,735,000	22,221,000	5,871,000	2,520,000
In store and afloat:					
At first of year	4,479,000	7,483,000	8,155,000		
At end of year	7,427,000	11,196,000	3,134,000		
City consumption and unaccounted for	23,754,000	2,414,000	2,402,000		
Year 1938					
Lake	81,121,000	12,654,000	1,491,000	1,883,000	2,305,000
Illinois Waterways		30,000			
Rail	17,459,000	12,480,000	21,178,000	5,168,000	2,956,000
In store and afloat:					
At first of year	7,427,000	11,196,000	3,134,000		
At end of year	14,541,000	10,138,000	2,857,000		
City consumption and unaccounted for	30,107,000	5,867,000	2,152,000		
Year 1939					
Lake	72,535,000	9,487,000	449,000	2,031,000	10,467,000
Illinois Waterways					
Rail	21,604,000	13,908,000	30,314,000	5,217,000	2,917,000
In store and afloat:					
At first of year	14,541,000	10,138,000	2,857,000		
At end of year	13,017,000	7,035,000	1,702,000		
City consumption and unaccounted for	30,710,000	6,478,000	2,538,000		

APPENDIX II

Rules affecting the application of proportional rates applying on grain, grain products, and grain byproducts, in carloads (using Chicago, Ill., as a representative reshipping point), to destinations in central territory and western termini points (including eastern trunk-line arbitrary points)[1]

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence, as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 71), originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

GRAIN PRODUCTS AND FLOUR (NORTHWEST)

[This rule provides for the milling or malting in transit; also the milling, malting, mixing or reconsignment in transit, and specifies the points at which these services are to be performed.]

GRAIN PRODUCTS NAMED IN NOTE 10 BEARING REFERENCE * (STAR) (NORTHWEST) ALSO BY-PRODUCTS OF GRAIN (NORTHWEST)

Rates on Grain Products and By-Products of Grain, subject to this Note, will apply on Grain Products in Note 10, pages 72 and 73, bearing reference * (star)

[1] These rules (or notes) are taken from Agent B. T. Jones' tariff I. C. C. 3300, effective June 30, 1939, and supplement 7 thereto, effective October 15, 1939.

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and on By-Products of Grain (see Note 15, page 74), carloads, originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory, as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 40 in the suspended schedules was modified to read:

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail[1] transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrive by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal-River-Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail lines from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

NOTE 45. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transport

[1] Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional), will apply.

tion line (except Illinois Grain moving via water transportation line) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will ONLY APPLY on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A 1. Rates on Grain (see Note 5, page 71), from Chicago, Ill., * * * subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

A 2. Rates on Grain Products (see Note 10, pages 72 and 73) from Chicago, * * subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

* * * * * * *

Note 45 in the suspended schedules reads substantially as above, except that the second paragraph begins with the words "Except as otherwise provided in tariffs as amended," and the words "or water," in the third line, and the parenthetical phrase beginning in the third line and ending in the fourth line, reading "(except Illinois Grain moving via water transportation line)" have been eliminated, and a new paragraph has been added, reading:

"These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co. Tariff No. 41 O, I. C. C. No. 66, and Spring Lake Packet Co., Tariff No. 41 N, I. C. C. No. 70, supplements thereto or successive issues thereof."

APPENDIX III

Rules affecting the application of proportional rates applying on grain, grain products, and byproducts of grain, in carloads, using Chicago, Ill., as a representative reshipping point) to destinations in trunk-line and New England territories, and other eastern points, including certain points in eastern Canada[1]

NOTE 20. APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which joint through commodity rates are in effect in connection with the in-bound

[1] These rules (or notes) are taken from supplement 58, Agent B. T. Jones' tariff, I. C. C. 5955, effective June 30, 1939, and supplement 67 thereto, effective October 15, 1939 246 I. C. C.

carrier via the re-shipping point from original shipping point to final destination, provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom. * * *

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

The Ex Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, * * * via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * * * * *

Note 20 in the suspended schedule reads:

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail †† transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. * * *

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill. * * * (Will not apply on Ex River, Canal, River-Canal or Canal-River traffic arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31 J. I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * * * * *

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†† Application via water transportation † eliminated; except as provided in this Note rate (not re-shipping or proportional) published in tariff as amended, will apply.

† Increase.

APPENDIX IV

Copy of an in-bound freight bill covering a shipment moved by barge to Chicago

Transit No. 379108
Bureau

JOHN I. HAY COMPANY

37 W. Van Buren St., Chicago, Ill.

F. B. No. 1222
Trip No. CC-49

To: Continental Grain Co
332 So. La Salle St.,
Chicago, Illinois

Invoice Date — October 26, 1939
Tow Boat — Whiteman
Barges — 102
Shipping Date — October 25, 1939
Shipping Point — La Salle, Ill.

Freight from La Salle to Chicago, Ill., viz: 44804.16 bu. @ $0.015 per bushel $672.06

2,688,940 pounds unloaded at R. I. Term Elev. 10/28/39

Paid 10/30/39
JOHN I. HAY CO.

Copy of shipper's certificate, used to engage application of proportional rates

Transit shipping direction

Penna. RR.
2 Cars of Bulk Corn.
Order: Continental Grain Co.,
Baltimore, Md.
Notify: Continental Grain Co.,
New York, N. Y.

Forward via * * *

Transit House
R. I. Terminal Elev.

Date Loaded
10/30/39

Out Bound Reference

Car Number	Initial	Weight	
50671	G. N.	120,000	* * *
706290	STP	93,000	* * *

Board of Trade Weight

[Rate shown herein to be applied only when authorized by the Central Inspection and Weighing Bureau]

In bound reference

Transit record No.	Origin point	Date	Billed from	Road	Date	Waybill No.	Commodity	Weight applied	Rates Thru	Rates Paid in Bal out
379106	La Salle, Ill	10/25/39		Hay		Barge #102	Corn	120,000		16
Do	do	do		do		do	do	93,000		16

B. L. Clerk please sign Continental Grain Co. in Section 7. Shipment authorized as indicated hereon Central Inspection & Weighing Bureau

SHIPPER'S CERTIFICATE

This is to certify that the Billing listed under inbound is applicable to the commodity forwarded as provided in C. F. A. R. R., Tariff No. 413 K, I. C. C. No. 3204.

CONTINENTAL GRAIN COMPANY,
Signature of shipper

Copy of an inbound freight bill covering a shipment moved by barge to Chicago

Transit No. 392790
Bureau

THE ALLIED BARGE CORPORATION
829 N. Libert St., Morris, Ill.

11 29 39
Freight Bill No. 271

Lowell Hoit & Company
So. Chicago, Ill.

Route Via: Meckling Barge Tow
Mary Ellen

Morris, Ill., 11 25 39 WB No. 419 Coop Allied Grain Dealers Corporation, Barge No. 745

Oats, 19,271.08 bu., 0.014	$269.79
Beans, 8,674.20 bu., 0.0175	140.25
	410.04

Unloaded: 616,680 Oats Irondale Elev. 11 27
480,960 Beans Norris Elev. 11 29

1,097,640 pounds.

Paid 11 30 39 per W. H. Allen.

2961 C. C.

Copy of shipper's certificate, used to engage application of proportional rates

Transit Shipping Direction:
N. Y. C. (and others)
11 cars of Oats
Order: Norris Grain Company, and various other parties destined to various points in Ohio, Ky., N. Y., Va., and Md.
Notify: Various parties. Usually at same destination.

Forward via * * *

Transit House
Norris Elev.

Date Loaded
1/5/40 and later dates

Out-bound reference

Car Number
Various

Initial
Various

Weight
Various

Board of Trade Weight

[Rate shown herein to be applied only when authorized by the Central Inspection and Weighing Bureau]

In bound reference

Transit record No.	Origin point	Date	Billed from	Road	Date	Waybill No.	Commodity	Weight applied	Rates Thru	Rates Paid in Bal. out
392790	Morris, Ill	11/25/39				Barge #745	Oats	13,190		17.5
Do	do	do				do	do	64,000		16.5
Do	do	do				do	do	64,000		25
Do	do	do				do	do	64,000		25
Do	do	do				do	do	80,000		16.5
Do	do	do				do	do	60,800		16.5
Do	do	do				do	do	60,800		16.5
Do	do	do				do	do	76,800		23
Do	do	do				do	do	64,000		16.5
Do	do	do				do	do	5,090		23
Do	do	do				do	do	64,000		16.5

SHIPPER'S CERTIFICATE

This is to certify that the tonnage listed under in-bound is applicable to the commodity forwarded as provided in JONES R. R., Tariff No. 413 K, I. C. C. No. 3204.

NORRIS GRAIN COMPANY.
(Signature of shipper.)

The respective destinations of the out-bound shipments, in the order above set forth, were Lexington, Ky., Bellevue, Ohio, Albany, N. Y., Albany, N. Y., Bellevue, Ohio, Bellevue, Ohio, Bellevue, Ohio, Front Royal, Va., Bellevue, Ohio, Baltimore, Md., and Bellevue, Ohio. The out-bound reference also shows the car initial and number in which the out-bound shipment was made, and in addition to the "weight applied" shown above, the total weight of the shipment. For oats the total disposition amounted to 616,680 pounds, leaving a balance on hand out of the total of [illegible] pounds of [illegible] pounds. The bean tonnage in barge 745 was transferred to the account of the Archer Daniels Midland Co., [illegible] shipment authorized as indicated hereon Central Inspection & Weighing Bureau.

Copy of an in-bound freight bill covering a shipment moved by barge to Chicago

Transit No. 392626
Bureau

A. L. Mechling Barge Line
Sheffield, Illinois

Nov. 29, 1939

Norris Grain Company, Chicago, Illinois.

Chillicothe, Ill., 11/27/39, Norris Grain Co., Barge No. 7.
Corn, 680,000 Prepaid.
Unload 11-28 Norris Elevator.
236 I. C. C.

Copy of shipper's certificate, used to engage application of proportional rates

Transit shipping direction
8 Cars of Corn

B. & O. and others

Forward via * * *

Transit House
Norris Elev

Date Loaded
12-27-29-39

Order Norris Grain Co., and various other parties.
Notify Vario parties

Out-bound reference
Car Number
Various

Initial
Various

Weight
Various
Board of Trade Weight

(Rate shown herein to be applied only when authorized by the Central Inspection and Weighing Bureau)

In bound reference

Transit receipt No.	origin point	Date	Billed from	Road	Date	Westbill No.	Commodity	Weight applied	Rates		
									Thru	Paid in	Out Rate
392526	Chillicothe, Ill	11-27-39				Barge 67	Corn	11,620			5
Do	do	do				do	do	100,000			15
Do	do	do				do	do	96,000			15
Do	do	do				do	do	100,000			15
Do	do	do				do	do	100,000			15
Do	do	do				do	do	100,000			15
Do	do	do				do	do	88,000			15
Do	do	do				do	do	94,980			
Total disposition								690,600			

SHIPPER'S CERTIFICATE

This is to certify that the tonnage listed under is loaded as applicable to the commodity forwarded as provided in JONES R. R., Tariff I. C. C. No. 413 K, I. C. C. No. 3201 as to destinations other than Paris, Ill., as to which reference is made to WTL R. R., Tariff No. 331 E, I. C. C. No. A 3102, or WTL R. R. Tariff No. 339 E, I. C. C. No. 3073.

NORRIS GRAIN COMPANY
(Signature of Shipper.)

All of the shipments listed above were consigned to Toledo, Ohio, except the first, which was consigned to North Troy, Vt., and the last two, which were consigned to Paris, Ill. The out-bound reference also shows the car initial and number in which the out-bound shipment was made, and in addition to the weight applied, shown above, the total weight of the out-bound shipment. The transit shipping directions also bear stamp reading "Shipment authorized as inspected General Inspection & Weighing Bureau."

Copy of lake grain bill of lading covering a shipment of grain transported by lake steamer to Chicago

AMERICAN FORM 1936 LAKE GRAIN BILL OF LADING

Transit Bureau
253116
Record No

DULUTH, MINN., *August 29, 1938*

Shipped in apparent good order and condition by Occident Terminal Div. of Russel Miller Milling Company as agents and forwarders, for account and risk of whom it may concern, on board the Steamer Maritana, whereof ... is master, now in the port of Duluth-Superior and bound for So. Chicago, Ill.

* * * * * * *

Order of Electric Steel Elevator Division of Russell Miller Milling Co.
Care of Agent, Irondale Elevator, South Chicago, Illinois.
Notify Norris Grain Company, South Chicago, Illinois.

*

[Copy—not negotiable]

Consisting of One hundred forty-four thousand (144,000) bushels of No. 1 Rye
Payable by.....
Freight from Duluth Superior to South Chicago, Ill. Being shipper at ... cents
Duluth ...
per bushel of Fifty-six pounds.
Grain loaded All over.
Unloaded Irondale Elev. 8/25/38.

143,708.32 Bus.
8,047,680 pounds
By ALASTAIR GUTHRIE, *Agent*
246 I. C. C.

Representative copy of a shipper's certificate which was used to engage the application of proportional rates

Transit Shipping Direction
Wabash (and others)
Order Norris Grain Company
Toledo Ohio
Notify Norris Grain Company
Same

Forward via * * *

Transit House
Irondale

Date Loaded
11 30

Board of Trade Weight

[Rate shown hereon to be applied only when authorized by the Central Inspection and Weighing Bureau]

In-bound reference								Out-bound reference			
Transit record No.	Origin	Date	Billed from	Road	Waybill No.	Weight applied	In rate paid	Out rate	Car No.	Initial	Weight
255116	Duluth, Minn	8-20-38			Steamer Maritana	61600		16	142558	RI	61600
Do	do	do			do	61600		16	140124	RI	61600

SHIPPER'S CERTIFICATE

This is to certify that the tonnage listed under inbound is applicable to the commodity forwarded as provided in JONES R. R. Tariff No. 413 I. I. C. C. No. 3060

NORRIS GRAIN COMPANY.
(Signature of shipper.)

77 shipper's certificates, in the above form, were executed covering 7,522,240 pounds of the tonnage unloaded at the Irondale Elevator from the steamer *Maritana*. The out-bound tonnage from Chicago was loaded into 100 separate cars, which were consigned to various points in the States of Indiana, Ohio, Kentucky, Virginia, Maryland, Pennsylvania, New Jersey, and Massachusetts, and the "Out Rates" shown on these certificates ranged from 14 to 28 cents. The "In Rate-Paid" under "Transit Record No. 255116" was never shown, but in a few instances only a part of the out-bound tonnage from Chicago consisted of tonnage moving into Chicago on the steamer *Maritana*, the balance of the tonnage moving into Chicago by rail. In such instances the rate into Chicago by rail was always shown. Transit shipping directions also have stamp reading: "Shipment authorized as indicated hereon Central Inspection & Weighing Bureau."

APPENDIX V

Transit rules published in Agent B. T. Jones' tariff I. C. C. No. 320.

RULE 7. TO WHOM AND WHEN GRANTED

Transit privilege will only be accorded shippers, transit house owners or operators who comply with these rules, keep records in the manner prescribed in Rules 11 * * * and make statements, when requested, as to tonnage and representative freight bills on hand, and make affidavit, when required, as to the accuracy of such records and statements, and permit inspection thereof, at any time, by the Central Inspection and Weighing Bureau.

Transit privileges will only be accorded when tariff under which transit rate is applied permits application of transit privileges on commodities moving under such tariff.

* * * * * * *

RULE 11. RECORDS

Transit house records must show all commodities handled, point of origin and destination, and whether received or forwarded by rail, boat, wagon or otherwise, which records must clearly show the different commodities, in pounds, separately:

(a) Received by rail.

(b) Received by boat.

(c) Received by wagon.

(d) Transferred from one transit house to another. (Specify transit house.) * * *

(e) Forwarded by rail (local or nontransit).

(f) Forwarded by boat (local or nontransit).

(g) Disposed of locally.

(h) Forwarded by rail (transit).

(i) Forwarded by boat (transit).

(j) On hand.

(k) Commodities subjected to treatment and change in weight due to such treatment. * * *

RULE 15. INBOUND CHARGES

Shipments delivered to transit houses will be subject to full tariff rates of inbound carriers based on actual weights subject to tariff minima.

RULE 19. RECORDING FREIGHT BILLS

Inbound carrier's paid freight bills or boat manifests, with duplicate, covering shipments subject to these rules shall be recorded with the Central Inspection and Weighing Bureau. * * *

RULE 39. ACCESS TO TRANSIT HOUSES

The Central Inspection and Weighing Bureau shall have access at all times to transit houses and records to check up the commodities therein and the freight bills therefor, and it shall be its duty to:

(a) Cancel freight bills for like commodities in excess of the commodities in the house.

(b) Keep a book record of all inbound freight bills and boat manifests * * *

* * * * * * *

(d) It shall also be the duty of the Central Inspection and Weighing Bureau to insert on the shipping directions and the original and duplicate inbound freight bills, the through rate, division, proportional or reshipping rate (as the case may be), properly applicable. * * *

RULE 61. RATES

The through rate to be applied shall be the lawfully published rate through from the original point of shipment to final destination in effect via the transit point at the time of initial shipment from the origin applicable to the commodity covered by inbound billing which these rules permit to be matched against outbound shipments. (See Rules 11 * * *.)

2361 C. C.

GOVERNMENT PRINTING OFFICE 1947

APPENDIX B.

Report of Division 2 of the Interstate Commerce Commission in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory, reported at page 353 in Volume 246 of the Interstate Commerce Commission reports.

Appendix II and Appendix III to the Report of Division 2 in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-barge to Official Territory, 246 I. C. C. 353, as found at pages 385 to 388, inclusive, thereof.

APPENDIX II

Rules affecting the application of proportional rates applying on grain, grain products, and grain by-products, in carloads (using Chicago, Ill., as a representative reshipping point), to destinations in central territory and western termini points (including eastern trunk-line arbitrary points)[1]

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence, as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

[1] These rules (or notes) are taken from Agent B. T. Jones' tariff I. C. C. 3300, effective June 30, 1939, and supplement 7 thereto, effective October 15, 1939.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 71), originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

GRAIN PRODUCTS AND FLOUR (NORTHWEST)

[This rule provides for the milling or malting in transit; also the milling, malting, mixing or reconsignment in transit, and specifies the points at which these services are to be performed.]

GRAIN PRODUCTS NAMED IN NOTE 10 BEARING REFERENCE* (STAR) (NORTHWEST) ALSO BY-PRODUCTS OF GRAIN (NORTHWEST)

Rates on Grain Products and By-Products of Grain, subject to this Note, will apply on Grain Products in Note 10, pages 72 and 73, bearing reference *(star) and on By-Products of Grain (see Note 15, page 74), carloads, originating in the following described territory.

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory, as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 40 in the suspended schedules was modified to read:

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail[1] transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described

[1] Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional), will apply.

below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrive by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail lines from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

NOTE 45. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will ONLY APPLY on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A-1. Rates on Grain (see Note 5, page 71), from Chicago, Ill., * * * subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 46, page 83).

A-2. Rates on Grain Products (see Note 10, pages 72 and 73) from Chicago, * * * subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

* * * * *

Note 45 in the suspended schedules reads substantially as above, except that the second paragraph begins with the words "Except as otherwise provided in tariff, as amended," and the words "or water," in the third line, and the parenthetical phrase beginning in the third line and ending in the fourth line, reading "(except Illinois Grain moving via water transportation line)" have been eliminated, and a new paragraph has been added, reading:

"These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co., Tariff No. 41-O, I. C. C. No. 66, and Spring Lake Packet Co., Tariff No. 41-N, I. C. C. No. 59, supplements thereto or successive issues thereof."

APPENDIX III.

Rules affecting the application of proportional rates applying on grain, grain products, and byproducts of grain, in carloads, (using Chicago, Ill., as a representative reshipping point) to destinations in trunk-line and New England territories, and other eastern points, including certain points in eastern Canada [1]

NOTE 29. APPLICATION OF RE-SHIPPING OF PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

* * *

[1] These rules (or notes) are taken from supplement 58, Agent B. T. Jones' tariff, I. C. C. No. 3055, effective June 30, 1939, and supplement 67 thereto, effective October 15, 1939.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, * * * via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * *

Note 20 in the suspended schedule reads:

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail †† transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-

†† Application via water transportation † eliminated; except as provided in this Note, rates (not re-shipping or proportional) published in tariff as amended, will apply.

† Increase.

bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. * * *

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., * * * (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways, except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J. I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

APPENDIX C.

BEFORE THE

Interstate Commerce Commission

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY.	I. & S. Docket No. 4718

PETITION OF INLAND WATERWAYS CORPORATION OPERATING THE FEDERAL BARGE LINES, FOR REHEARING AND RECONSIDERATION OF THE REPORT HEREIN.

Now comes the Inland Waterways Corporation, operating Federal Barge Lines, and petitions for consideration of the report of Division 2 herein, dated July 31, 1941, and for a rehearing herein, and in support of this petition respectfully states:

Division 2, by its aforesaid report, fixes its stamp of approval upon a proposal of eastern rail lines to restrict the application of their established proportional rates on grain and grain products, so as to prevent the application of said proportionals on shipments which arrive at Chicago via barge lines operating on the Illinois waterways, while continuing their application on shipments arriving at Chicago via rail lines from the same

points, or via lake cargo vessels. Using New York as a representative destination, the effect of the proposal will be to apply a proportional rate of 26 cents for the rail haul east of Chicago on shipments arriving at Chicago via rail carrier or lake cargo carrier, while discontinuing its application on shipments transported to Chicago by common carriers on the Illinois River. On shipments transported by such carriers the respondents propose to apply a rate of 34.5 cents for the future.

The proposed schedules are directly contrary to and prohibited by Section 3, paragraph (4) of the Interstate Commerce Act, as recently amended by the Transportation Act of 1940. That section expressly prohibits any discrimination by a carrier between its connecting lines. Federal Barge Lines, as a common carrier by water subject to Part III of the Interstate Commerce Act, is such a connecting carrier, and is directly discriminated against in the proposed schedule; it protests against this discrimination, and urges that Division 2 erred in failing to require the cancellation of this unlawful proposal.

ARGUMENT IN SUPPORT OF PETITION.

This petition deals solely with the section of the Act above referred to, and it is the contention of Federal Barge Lines that this new provision of the law has the effect of directly invalidating the very schedules which are here under suspension. In addition, we believe that Division 2 erred in its report in several other respects, notably in its interpretation of the present tariffs, and in its decision as to the issues under Sections 1, 2, and paragraph 1 of Section 3. These matters are, we believe, urged in the petitions of other parties for reconsideration herein. Whatever conclusion the Commission may reach as to those other matters, it can not affect the right of this carrier to non-discriminatory treatment by its connecting rail lines, respondents herein. The proposed schedules are unlawful, if for no other reason, simply because they provide for discrimination in rates between Federal Barge Lines, on the one hand, and rail lines or lake cargo vessels, on the other.

Recent Amendments to the Law Require Cancellation of the Suspended Schedules.

Paragraph (4) of Section 3 of the Interstate Commerce Act, as amended by the Transportation Act of 1940, provides as follows (emphasis supplied):

> "(4) *All carriers subject to the provisions of this part* shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and *shall not discriminate in their rates, fares, and charges between connecting lines*, or unduly prejudice any connecting line in the distribution of traffic that is

not specifically routed by the shipper. As used in this paragraph the term *'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.''*

By this section the Congress has extended to include common carriers by water subject to Part III the same protection against discrimination by connecting rail carriers as was formerly provided in paragraph (3) of Section 3 as between connecting rail lines. Having ordained a new order by bringing common carriers by water within the regulatory powers of this Commission, the Congress thus imposed upon the rail carriers a new duty to refrain from discriminating in their rates between connecting water lines, or between connecting rail and water lines, as well as between connecting rail lines. At the same time and consistent with the whole spirit of this new program to dignify water transportation for its new role as a "regulated" carrier, Congress likewise amended paragraph (4) of Section 1 of the Act so as to require common carriers by railroad "to establish reasonable through routes with common carriers by water subject to Part III".

To complete the picture, Section 305(d) of the Interstate Commerce Act, as amended, was enacted to impose upon common carriers by water the same duty with respect to discrimination between connecting common carriers by railroad, as is imposed on the rail carriers in Section 3 (4). This section is in exactly the same terms as is Section 3 (4), and the result is to require both common carriers by water and common carriers by railroad for the future to accord equal treatment to all their connecting lines, of whatever character. Historical differences are to be forgotten, and it matters not under the terms of the statute whether in the past discrimina-

tions between connecting lines have been one sided or which type of transportation has, in this respect, held the upper hand; for the future, each mode of transportation named in these sections must treat connecting lines via the other mode of transportation exactly as it treats its kindred connecting lines.

The power of the Interstate Commerce Commission with respect to enforcement of the duty imposed by the foregoing section is plenary. And because the schedules under suspension herein are opposed to the sections cited, and represent a refusal of the rail lines to perform the duty imposed upon them thereby, those schedules can and must be condemned and ordered canceled herein. Further, the Commission's power in this case is supplemented by the provisions of Section 6 (11) (b), so that the Commission may in this proceeding not only require the cancellation of the objectionable schedules under Section 3 (4), but may also require the maintenance of the present, voluntarily established, rates as reasonable proportionals for application to ex-water traffic under Section 6 (11) (b). Theoretically, the Commission is not limited to a choice between the unlawful proposed rates and the present rates, but may, upon an adequate record, prescribe some different basis of rates for the future. Actually, no different proposal has been put forward, nor has evidence been introduced which could support a different basis of rates than those presently in effect. That fact, however, cannot possibly militate to justify the proposed rates, but could only compel the postponement of any change in the present tariffs pending further hearing, and the introduction of a lawful proposal.

All that Division 2 has to say in commenting upon Section 6 (11) (b) (sheets 10, 28-9) boils down to the observation that the Commission's power under this

section is limited to the prescription of proportionals for traffic brought to the reshipping point by a common carrier by water and that the present record does not contain sufficient evidence to warrant the prescription of any different basis than that proposed. Yet this protestant, Federal Barge Lines, is such common carrier and does participate in the traffic. And, as stated, the lack of any different proposal than the unlawful one under suspension cannot affect the Commission's power to condemn that proposal or its authority under Section 6 (11) (b) to require the maintenance of the present proportionals.

FEDERAL BARGE LINES IS A CONNECTING LINE OF RESPONDENTS WHO PROPOSE UNLAWFULLY TO DISCRIMINATE AGAINST IT.

Division 2 in its report devotes some four sheets to a discussion of the status of other barge lines than Federal. We believe that the conclusions of the Division thereon are erroneous, but whether or not other barge lines, parties hereto, may be held to be common carriers subject to the Act, there can be no question but that Federal Barge Lines is such a common carrier. This is conceded by respondents, and is recognized by Division 2 on sheet 10. Moreover, while considerable mention is made in the report of Division 2 of "unpublished barge charges" and "unregulated barge charges" which "may be changed with or without any notice", the fact is that this protestant, Federal Barge Lines, is a common carrier subject to Part III, that its rates are now published in appropriate tariffs filed with this Commission (Federal Barge Lines Tariff No. 12-E, I. C. C. No. 198), and that such rates can and will be changed only according to the provisions of the law. Consequently, it cannot be disputed that Federal Barge Lines occupies the status of a connecting line to the respondent car-

riers, and is entitled to the protection afforded by Section 3 (4).

Division 2 observes the common carrier status of Federal Barge Lines on sheet 10, though the Division apparently waives aside any further consideration with the added comment "but this line has hauled little if any grain to Chicago from origins on the Illinois waterways here considered." While the importance of this observation is left wholly to inference, it should be noted to avoid any possible misconception, first, that the right of Federal Barge Lines to non-discriminatory treatment by its connecting rail lines, is in no wise dependent upon the presence or amount of traffic handled by it in the past. Secondly, Division 2 does not state all the facts which have a bearing upon this matter, regardless of its lack of importance. As was stated in the proposed report of Examiner Taylor herein, but omitted from the report of Division 2, Exhibit 63 shows that tonnages handled to Chicago by the Federal Barge Lines have aggregated as follows: 1933, 4,657 tons; 1934, 45,772 tons; 1935, 32,367 tons; 1936, 35,220 tons; 1937, 52,900 tons; 1938, 5,843 tons; and 1939, 43,292 tons. The 1939 tonnage consisted entirely of wheat from East St. Louis and Campville, Illinois, and from Kansas City, Missouri. The discrimination against Federal Barge Lines as a connecting carrier which is inherent in the proposed schedules has exactly the same importance with respect to grain originating at those points, that it has as to grain originating at Illinois River origins or elsewhere. Federal Barge Lines is discriminated against in the matter of the rates applying east of Chicago, regardless of where the traffic originates.

Further, even though the amount or origin of the traffic presently handled by Federal Barge Lines can have no bearing or effect upon its right to non-discrim-

inatory treatment by connecting lines, it is pertinent, in view of the above noted observation of Division 2, to set forth herein the tonnages for the year 1940 and the first seven months of 1941. These tonnages are shown below in the table, as taken from the records of Federal Barge Lines. This information is not, of course, in the present record but is data which may and will be introduced if and when a further hearing herein be had.

GRAIN TONNAGE HANDLED BY FEDERAL BARGE LINES TO CHICAGO IN 1940 and 1st SEVEN MONTHS 1941

	E. St. Louis, Kansas City, Mo-Kan.	Havana Ill.	Montezuma Ill.	Kampsville Ill.	Naples Ill.	Total
Wheat	60,835 tons	3,489		1,084	1,059	66,467
Corn		1,901	1,041			2,042

Since Federal does unquestionably enjoy the status of a connecting common carrier by water, it is clearly entitled to the protection of Section 3(4). The meaning of that section is abundantly plain from a reading of the quoted language of the statute. It requires no interpretation and its effect to prohibit tariffs of the kind herein proposed is plain. In the early case of *The N. Y. & N. Ry. Co. v. The N. Y. & N. E. R. R. Co.*, 4 I. C. C. 702, Chairman Cooley discussed the old Section 3(3) in a case involving a complaint against discriminations between connecting rail lines, and, after dwelling upon the language of the section at length, stated at page 720:

> "When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monop-

> oly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment."

With these words there can be no reasonable disagreement, and impartial judgment admits of no other conclusion than that the amended statute now requires that no railroad shall make any difference or distinction in rates that will coerce the public to employ a connecting rail line rather than a connecting barge line. Yet, that is precisely what is proposed in the suspended schedules. The schedules provide for the application of reasonable proportional rates on grain, when that grain is brought to the reshipping point by a connecting rail line, and expressly prohibits their application when the grain is brought thereto via the Illinois waterways. Indeed, the eastern lines who are respondents here, frankly announce that the purpose of the proposed schedules is to discourage and make unattractive the use of barge facilities on the Illinois River. The extent and importance of the discrimination complained of is demonstrated by the following table, which compares the rates which, under the proposed schedules, will be applied to shipments which arrive at Chicago via the favored rail or lake carriers with the rates which will be demanded if the shipment is brought to Chicago by Federal Barge Lines.

PROPOSED RATES ON GRAIN FROM CHICAGO TO TRUNK LINE AND NEW ENGLAND TERRITORIES DEPENDENT UPON INBOUND CARRIER.

To	If arrived at Chicago via rail or lake carrier	If arrived at Chicago via Federal Barge Line
NEW ENGLAND TERRITORY		
Boston, Mass. (Domestic)	28.0	36.5
Boston, Mass. (Export)	17.5	26.0
Portland, Me. (Domestic)	28.0	36.5
Portland, Me. (Export)	17.5	26.0
TRUNK LINE TERRITORY		
Philadelphia, Pa. (Domestic)	24.0	32.5
Philadelphia, Pa. (Export)	16.5	25.0
New York, N. Y. (Domestic)	26.0	34.5
New York, N. Y. (Export)	17.5	26.0
VIRGINIA CITIES TERRITORY		
Baltimore, Md. (Domestic)	23.0	31.5
Baltimore, Md. (Export)	16.0	24.5
Norfolk, Va. (Domestic)	23.0	31.5
Norfolk, Va. (Export)	16.0	24.5

Throughout its report Division 2 erroneously treats the proposed schedules as canceling the application of the proportional rates on traffic arriving at the reshipping point by barge on "rates not subject to the Interstate Commerce Act" (Sheet 2). As a matter of fact, the proposed schedules say nothing about application to traffic which moves to the reshipping point under rates not on file with the Commission; instead they are by affirmative terms initially restricted to traffic arriving at the reshipping point via rail. In addition, the proposed notes make the proposed rates applicable on ex-lake shipments (which, incidentally, move on rates not filed with the Commission) and for good measure pro-

vide further that the rates will not apply on "ex-river, canal, river-canal, or canal-river traffic, arriving via Illinois waterways", with the single exception that the rates will apply on shipments arriving at Chicago from Kansas City under rates specified in a particular Federal Barge Line tariff filed with the Commission. At the time of the hearing it happened coincidentally that none of the excluded traffic moved on rates filed with the Commission. But it never was true even by coincidence that the proposed rates were to apply only where the inbound haul is under rates filed with the Commission. Furthermore, since the grain rates of the Federal Barge Lines have been filed with the Commission the proposed schedules do not even make application of the proportional rates in all cases where the traffic does move up to the reshipping points on rates filed with the Commission. It is beyond cavil that the discrimination contained in the proposed tariffs actually points at a particular group of connecting carriers, of which the Federal Barge Lines is one.

In *Chattanooga Packet Co. v. I. C. R. R. Co.*, 33 I. C. C. 384, 391, the provisions contained in paragraph (3) of Section 3 prior to the amendment were referred to, and Commissioner Meyer, speaking for the entire Commission without a dissent, said (page 391):

> "By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in the one case than in the other."

There is no claim here of a different service on ex-barge than on ex-rail or ex-lake grain. In fact the contrary is expressly conceded. (Tannehill, 106)

THE DECISION HEREIN MUST CONFORM TO THE LAW AT THE TIME THE DECISION IS MADE.

As already indicated, the amendment to the law upon which this carrier rests its claim for non-discriminatory treatment by connecting lines was enacted subsequent to the hearing herein. Prior to this amendment, it is true, the Commission had construed paragraph (3) of Section 3 as affording no protection to a carrier not subject to Part I of the Act, as to the particular traffic claimed to be the subject of a discriminatory rate. *Nicholson Universal S. S. Co. v. Pennsylvania R. Co.*, 203 I. C. C. 637. While all this is obviously changed by the amended Section 3(4), strangely enough, this decision is cited in the current report of Division 2 herein (sheet 16) in support of the statement that "Section 3 of the Act is not applicable to carriers that do not come within our jurisdiction". Apparently, the Division treats the statute as if it had not been amended, and in addition, ignores the fact, which it elsewhere states in its report, that at least this carrier is subject to the Commission's jurisdiction. In any event, this statement is wholly in apposite, and the Commission must, in deciding this case, apply the law as it exists today since the whole proceeding looks to the future, and we are concerned here with the lawfulness of a proposal which fixes the rates to be charged in the future.

It could hardly be seriously contended that the proposed rates should be permitted to take effect despite the provisions of Section 3 (4) simply because that section was enacted after the filing of these rates and after the hearing herein. Such a contention, if made, is effectively answered by the decision of this Commission in *I. & S. Docket No. 4150, Cancellation of Rates and Routes Via Short Lines*, 245 I. C. C. 183, 187. In that

case the respondent carriers proposed to cancel their joint through rates with certain short lines and the Commission noted on page 186 of its report that respondents contended that the amendments to paragraphs (3) and (4) of Section 15 were not applicable because all of the proceedings took place prior to the date on which the amendments became effective. Replying to this contention, the Commission held on page 187:

> "We are of the opinion that application of this provision to pending actions should not be regarded as of a retrospective character. In any event the amendment is remedial, and we think its application to these proceedings is proper."

Incidentally, in the cited case the Commission had postponed the argument and inquired of the parties whether they desired further hearing in view of the amendments. The response was in the negative. Similar action might still be taken in this case, if any further evidence might be desirable because of the amendments here relied upon. As such a further hearing, the only evidence which could have any likely bearing upon these issues happens to be evidence of facts of which the Commission is entitled to take official notice. For example, so far as this record discloses, the rates of the Federal Barge Lines are not on file with the Commission, and evidence as to the filing of those rates might conceivably be received at a further hearing. Yet a further hearing for the purpose of receiving evidence as to facts which appear from the Commission's own files seems distinctly unnecessary. Moreover, the report of Division 2 seems to recognize (sheet 33) that Federal Barge Lines' rates are filed with the Commission.

The proposed schedules have not been justified.

The suspended tariffs are clearly unlawful, if for no other reason, because they are in violation of Section 3(4). While this matter was urged by Federal Barge Lines in their exceptions to the proposed report of the examiner, and on oral argument, respondents make no effort to justify their proposal under this section, nor would it be possible for them to do so. Yet Division 2 fails in its report even to mention that section of the Act and neither touched upon nor considered the matters urged herein. All that Division 2 has to say with respect to the contentions of the Federal Barge Lines may be found at sheets 15 to 17, and on sheets 38 and 39 of the report, where those contentions are treated as if they involved only violations of Sections 1, 2, and 3 (1) of the Act. It is true that discrimination by rail carriers against the traffic of any other carrier is not unlawful so far as Section 3 (1) is concerned, since that paragraph contains a specific proviso to that effect. But as we have already seen, paragraph (4) of that same Section 3 does specifically prohibit discrimination in rates by a carrier between connecting lines, whether the connecting lines be rail or water carriers, or both. The complaint under paragraph (1) of Section 3 is not the complaint which we here urge, but relates to preference and prejudice between localities, shippers, and various descriptions of traffic. That complaint is advanced by the Chicago protestants and not by the Federal Barge Lines. The further statement of Division 2 (sheet 16) that "Section 3 of the Act is not applicable to carriers that do not come within our jurisdiction" can have no bearing upon the position of this protestant since it is a carrier subject to the jurisdiction of the Commission under Part III of the Inter-

state Commerce Act. The purpose of that statement in the Division's report, as already noted, is wholly inexplicable.

In disposing of the Section 2 issue, which Division 2 likewise attributes to this protestant, but which is primarily an issue raised and pressed by shipper protestants, the Division cites an authority which is wholly beside the point here made, and which has no bearing upon the right of this protestant as a connecting line. That case, *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, held (Division 3) that the service in the transportation of ex-rail and ex-water traffic is not under substantially similar circumstances and conditions and that, so far as Section 2 is concerned, proportional rate factors may differ with differences in the character of transportation to the point from which the proportional factors apply.

Accepting all that was said in that decision as law, it still remains that such differences in the character of transportation up to the reshipping point cannot conceivably furnish a justification for discrimination under paragraph (4) of Section 3. On the contrary, it is the express and direct purpose of that section, as amended, to wipe out all discrimination based upon differences in the character of the transportation up to the point of connection between carriers. That section forbids any carrier to discriminate between connecting lines, and defines connecting lines as any carrier subject to the provisions of Part I or any common carrier by water subject to Part III.

Apparently, Division 2 erroneously considered the proposed tariffs to be justified because simply "clarifying" the present tariffs without making any change. It devoted the greater part of its report to a discussion of

the various tariff notes and concluded that the present tariffs do not permit the application of the proportionals to ex-barge shipments. However, this question of interpretation of the present tariff notes can have no bearing or effect whatever upon the right of this protestant to relief from discriminatory treatment as compared with other connecting lines. The discrimination is present no matter how the tariffs are interpreted. Assuming, for example, that Division 2 correctly decided that the present tariffs do not legally provide for the application of the proportional rates on ex-barge grain, then all that is said as to the impropriety of applying those rates on ex-barge grain under the present tariffs applies with equal force to ex-lake grain. The present note 40 contains no different provisions as to ex-lake grain than is published as to ex-barge grain.

Consequently, even if we adopt as our own the view of Division 2 on the tariff interpretation question, the proposed tariffs then will be found to have the effect of *establishing* proportional rates for application on shipments brought up to the reshipping point by one class of carriers, *i. e.*, the lake cargo carriers, while at the same time refusing to provide similar, non-discriminatory rates for application on shipments which arrive at the reshipping points via Federal Barge Lines, or other barge carriers on the Illinois waterways. This is no different in principle from the discrimination which results if the present tariffs are interpreted as both shippers and carriers have historically regarded them, *i. e.*, as making the proportional rates applicable on both ex-barge and ex-lake shipments. In that case, discrimination comes about through the *exclusion* in the proposed notes of the barge carriers for the future, while the lake carriers continue to be included. It is simply a matter of the difference between taking away from one carrier

what has always been provided for all carriers, or establishing for one carrier a practice which is not established for another carrier. There is discrimination and that discrimination is brought about by the proposed schedules.

The only other matter mentioned by Division 2, which deserves comment in connection with paragraph four of Section 3, is the observation (sheet 17) that Federal Barge Lines "has no common arrangement with respondents for a through route, nor has a formal arrangement been entered into with them in connection with filed or unfiled barge rates." Curiously, the Division goes on to say that the suspended schedules would not of themselves constitute such an arrangement, although in other sections of the report the Division apparently regards the existence of such a common arrangement as a prerequisite to the proper application of proportionals on ex-barge grain. The answer, of course, is that the existence or non-existence of a common arrangement has no bearing upon our complaint, which is against the very failure of the rail lines to apply nondiscriminatory rates regardless of the character or identity of their connecting carrier. A common arrangement or a through route is a two-sided affair and Federal Barge Lines by the maintenance of its own rates, and by its position herein, fully performs its side of the obligation and fulfills its statutory duty to treat all connecting carriers alike. We complain that the rail lines, by their proposed schedules, refuse to perform their equally solemn duty.

Conclusion.

Petitioner has recently been informally advised that the eastern railway lines contemplate further amendments to their proposed tariffs so as to provide for the application of the proportionals on shipments transported up to the reshipping point by petitioner, Federal Barge Lines. While such action, if taken, would constitute a recognition of the soundness of our position herein and a fulfillment of the duty of the rail carriers, which they have heretofore refused to perform, we submit that, notwithstanding such action, the order herein should be modified so as expressly to condemn and prohibit the kind of discrimination complained of and which is inherent in the proposed tariffs as they now stand.

WHEREFORE petitioner prays that the above entitled case be reconsidered; that a reargument be granted therein, and that, if the record be deemed inadequate fully to inform the Commission of the facts which are pertinent to the issues herein, a rehearing be granted, and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

INLAND WATERWAYS CORPORATION
Operating Federal Barge Lines
By JNO. F. GIRAULT,
Its General Traffic Manager.
ROBERT N. BURCHMORE,
Its Attorney.

WALTER, BURCHMORE & BELNAP,
Of Counsel.
2106 Field Bldg.,
Chicago, Illinois.

August 26, 1941.

CERTIFICATE OF SERVICE.

I hereby certify that I have this day served the foregoing document upon all parties of record in the above entitled proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Chicago, Illinois, this 26th day of August, 1941.

ROBERT N. BURCHMORE,
Counsel.

APPENDIX D.

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718
GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

DECIDED DECEMBER 1, 1941

1. Proposed restriction of reshipping or proportional rail rates on grain and grain products, in carloads, from Chicago, Ill., and other grain rate-break points to eastern destinations, so they will not apply on ex-barge (Illinois Waterways) traffic shown to be just and reasonable and not shown to be otherwise unlawful.

2. Such rates on the ex-barge traffic found legally applicable in the past where the policing provisions of the governing tariffs were strictly complied with.

3. Findings in prior report, 246 I. C. C. 353, clarified and modified accordingly.

Appearances noted in prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

By schedules filed to become effective October 15, 1939, respondent rail carriers in official territory propose to restrict their reshipping or proportional rates on grain and grain products, in carloads, from Chicago, Ill., and other related grain rate-break points, to eastern destinations so they will not apply on ex-barge (Illinois Waterways) traffic. Upon protest of numerous interests the schedules were suspended, hearing was held, the matter was made the subject of a proposed report by the examiner, exceptions and replies to exceptions and oral argument before division 2. In the prior report, 246 I. C. C. 353, the division found that the application of such rates on the ex-barge traffic was without tariff authority and that the proposed schedules merely clarified this situation and were not shown to be unlawful. An order was entered vacating the order of suspension and discontinuing the proceeding.

Petitions for reconsideration addressed to all of the division's findings have been filed by certain protestants, as follows: (1) The so-called Chicago protestants operating elevators and dealing in grain at Chicago, (2) Illinois Agricultural Association, representing shippers located on the Illinois Waterways, (3) Finnegan Warehouse Company, operating an elevator on the Waterways, (4) Inland Waterways Corporation, operating the Federal Barge Lines, and (5) United States Department of Agriculture.

The Montana Flour Mills Company, which operates a mill at Cleveland, Ohio, and ships grain from Kansas City by barge to Chicago, thence by rail, but did not appear at the hearing,

has filed a petition for "leave to intervene," accompanied by a similar petition for reconsideration, addressed to all of the division's findings. However, as it does not give any explanation whatever as to why it did not appear at the hearing, its petitions must be, and are hereby, rejected under Rule II of our Rules of Practice, and will not be further considered. Petitions for reconsideration addressed solely to the division's finding under section 6 of the act were filed by respondents and intervener Chicago Board of Trade. Respondents filed a reply to protestants' petitions,[1] and the intervening western rail carriers filed a reply to all of the petitions. Thereupon the effective date of the vacating order was postponed until the further order of the Commission. The only protestant seeking a further hearing is the Federal Barge Lines, which points out that since the hearing it and certain other barge lines have filed their port-to-port grain rates with us, but this is a fact of which we can take official notice. Certain of the parties ask for reargument. Under the circumstances, we think that no useful purpose would be served by further hearing or reargument and that the matter can properly be disposed of in this report with a view to determining what, if any, modification or clarification of the division's findings should be made on reconsideration of the record in the light of the petitions and replies and our prior decisions.

At the time of the hearing, the barge lines were not subject to our jurisdiction and of course had no rates on file with us. The present tariffs naming the pro

[1] The western carriers urge that the division's findings are correct under section 6 as well as under sections 1, 2 and 3 of the act.

portional rates carry a so-called limitation rule, whereby they "are applicable only when the entire movement is performed by rail carriers or water-and-rail carriers under rates lawfully on file with us" except that such rule does not affect rates "published carrying provision that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic." They also carry a provision that they will apply on grain reaching "the shipping point via a rail *or water* transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and the rate paid to the reshipping point." To trunk-line territory, they specifically apply to ex-lake grain. To central territory, there are three sets of proportional rates, designated, respectively, as "trans-Mississippi", "Northwest", and "reshipping (Illinois)", the "Northwest" proportionals specifically applying on "shipments which arrive by boat lines at Chicago." The Northwest proportionals are in certain instances higher, and in certain instances lower, than the Illinois proportionals. The rate tariffs are made subject to the transit rules and regulations published in tariffs lawfully on file with us, including the policing rules and a so-called fourth-section rule providing that "in no case shall the combination rate to and from the reshipping point be less than the local rate from the reshipping point." In the proposed schedules, the words "or water" and the provision as to boat lines are omitted, and the rates are made applicable to ex-lake traffic to both central and trunk-line territories.

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The division found that there was and is no common arrangement between the barge lines and respondents for through routes on this traffic, that the ex-

barge traffic cannot comply with the transit rules where the rates for the inbound water haul are not on file with us, and that the maintenance of barge-rail combination rates so much lower than the all-rail rates, particularly where the inbound water haul is so short, results in a breaking down of the all-rail grain rate structure from adjacent origins in Illinois and Indiana. It construed the words "or water" in the present tariffs as referring only to water carriers having rates on file with us. It held that under the circumstances the application outbound of any rate other than the local rate was and is illegal under section 6, that the proposed schedules are not unlawful under section 1, and that the circumstances and conditions surrounding the inbound and combination movement of the ex-barge traffic are so different from those surrounding the inbound and through movement of the ex-rail and ex-lake traffic as not to constitute a violation of sections 2 and 3 of the act.

As to section 6, the division in effect held that a proportional rate by a carrier subject to the act is never legal under section 6 unless the other factor of the through rate is lawfully on file with us under paragraph 7 of that section or applies by common carrier by water under paragraph 11(b) thereof. As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act. Under the circumstances, we think that the division's finding under section 6 is not warranted as applied to shipments of this ex-barge grain where the policing provisions were strictly complied with, namely, adequate proof was furnished of the identity of the in-

bound water carrier, the origin of the traffic, and the inbound rate paid thereon.

To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to 13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Cleveland, Ohio, the barge-rail combinations will be 1.75, 4.75, and 0.75 cents, respectively, lower than the all-rail rates.

To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion

of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict

conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5-cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul,

and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound

and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local

rates or joint barge-and-rail rates lower than the combinations.

The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered.

COMMISSIONER LEE concurs in the result.

EASTMAN, *Chairman*, dissenting in part:

For many years the respondent railroads have applied eastbound from Chicago what they termed "reshipping or proportional rates," which were lower than the corresponding local rates, on grain and grain products brought to Chicago by rail or by water. Similar rates were applied under like conditions from certain related points, but Chicago is the point of predominant importance. These reshipping rates were applied from

the beginning on grain brought to Chicago by lake vessel and, after the opening of the Illinois Waterways, they were applied on grain brought in by waterway barge. In the suspended schedules it is proposed to eliminate their application to this barged grain.

Division 2 concluded "that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," and found "that the schedules under suspension are not shown to be unlawful." The conclusion as to the applicability of the rates in the past met with vehement protests from all parties to the proceeding including respondents, except the intervening western railroads, and it is now reversed, almost without discussion.

I agree with this reversal, but believe that in view of the elaborate discussion of this matter by division 2, the reasons why its conclusion was unsound should be pointed out clearly and explicitly.

After citing *Kansas City Transp. Bureau* v. *Atchison, T. & S. F. Ry. Co.*, 16 I. C. C. 195, 201, to the effect that a "proportional rate means a part of or a remainder of the through rate or it means nothing at all," and *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 69 I. C. C. 185, 188, to the effect that it is well settled that reshipping and proportional rates "are inseparably connected with and form parts of the rates applying to through transportation," division 2 relied primarily on the following from *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, 575:

> We have found that a proportional rate is one which applies to a part of a through transportation

which is entirely within the jurisdiction of the Interstate Commerce Act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. (Emphasis supplied.)

The division went on to say that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common carriers by water. It is elemental that a proportional factor is but a part of a through rate. It follows that the proportional rate and the rate with which it is combined to make a through rate must be on file with us."

Singularly enough, after concluding from this reasoning that the "proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," the division found that the "schedules under suspension are not shown to be unlawful." Yet, as stated in the present report, the reshipping or proportional rates are by those schedules "made applicable to ex-lake traffic to both central and trunk-line territories," and it is conceded that the rates charged by the lake carriers are not on file with us or within the jurisdiction of the act and that these lake carriers are not common carriers. The same reasoning which led the division to conclude that the reshipping or proportional rates had never been legally applicable on the ex-barge grain would clearly require a similar conclusion as to the ex-lake grain; but this fact was ignored.

It was not ignored by respondents, and hence their protests against the decision. They saw in it, and correctly, the enunciation of a principle which would condemn, not only the application of the reshipping or proportional rates in issue on ex-lake grain, but also the many other rates of like characteristics which have for

years been published to apply to rail transportation to or from inland or coastwise ports on traffic carried from or brought to the port by unregulated contract or private water carriers. They cited the numerous cases in which we have over many years prescribed or approved such rates, which we have sometimes termed rates "in the nature of proportional rates" and which are known variously as ex-lake, ex-river, ex-ocean, lake cargo, reshipping, transshipment, import, and export rates. As is stated in the present report, in considering the principle enunciated by division 2:

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> As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act.

This is, indeed, the sole reason given for finding that the conclusion of division 2 upon this matter of rate applicability was "not warranted." Obviously the fact thus stated does not in itself prove that the principle is wrong. The matter, therefore, plainly calls for further consideration.

As shown above, division 2 relied primarily on the statement in *Chicago and Wisconsin Points Proportional Rates, supra*. (I dissented from that decision) that we "have found that a proportional rate is one which applies to a part of a through transportation *which is entirely within the jurisdiction of the Interstate Commerce Act*," qualifying this statement, however, by another to the effect that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common car-

riers by water." No citation followed the statement quoted from the *Chicago and Wisconsin case*, and I have been able to locate no case where such finding was made. *Conference Ruling 301(b)* did define a proportional rate in this manner, but our conference rulings were long since rescinded as unreliable. Furthermore, I call attention to the paragraph which followed the statement quoted:

> These proposed rates derive no validity from such analogy as they may be thought to bear to proportional rates by rail to and from the ports which differ from the corresponding local rates and which apply on traffic brought to or carried from the ports by common carriers by water, or to so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to contract carriers by water. In section 6(13)(c) of part I of the act the publication of proportional rates by rail to or from the ports which differ from the corresponding local rates, and which apply on traffic that has been brought to the port or is carried from the port by a common carrier by water, is specifically authorized. Part II of the act contains no similar authorization, either express or implied, for the publication of proportional rates, such as these, in connection with the truckload rates of common or contract carriers subject to part II or the carload rates of common carriers by railroad subject to part I. All the carriers, including respondents, which would participate in the through transportation contemplated by respondents' tariffs are subject to either part I or part II of the act and are therefore amenable to the provisions of those parts governing the publication of rates and to regulations which we have promulgated thereunder. Consequently, the reports, including the report in ***Tariffs Embracing Motortruck or Wagon Transfer Service***, 91 I. C. C. 539, cited by respondents, in which we have recognized the legality of so-called

proportional rates or rates in the nature of proportional rates published by certain

rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water, are not in point. Where, as here, both the carriers into and out of the reforwarding points are subject to the Interstate Commerce Act, we have in no case given our approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations.

It will be noted that in this paragraph it is made clear that "we have recognized the legality of so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water," and one of these cases is cited. In that case, as it happens, a dissenting opinion relied on *Conference Ruling 304(b)*. The case, therefore, definitely overruled that conference ruling. The paragraph cites section 6(13)(c) [now 6(11)(b)] as justification for these cases, without explaining how this could be so in view of its limitation to traffic brought to or carried from the port by a common carrier by water. Finally the paragraph, in effect, limits the previous statement "that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the Interstate Commerce Act" to situations where "both the carriers into and out of the reforwarding points" are subject to the act, which is not the situation here under consideration.

As often happens, confusion has been caused by definitions. The act contains no definition of a "proportional" rate except that which is found in section 6(11)(b), which was originally enacted in the Panama Canal Act of 1912 and reads as follows:

> By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

Yet proportional rates which do not conform to this definition have from the very beginning been published by the railroads and been recognized as lawful and prescribed by us. It is clear that the definition was for the particular purposes of the Panama Canal Act paragraph in which it is found and which authorizes us to prescribe "proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier." The history of the Panama Canal Act makes it evident that this provision was motivated by a fear that the Commission might not prescribe such rates in the absence of definite prompting by Congress.

In our decisions, also, references will be found to "true proportional" rates as distinguished from those which are "in the nature of proportional rates." The carriers have often conformed to such a distinction by using, where the through transportation is subject only in part to our jurisdiction, some

other designation than "proportional", such as "reshipping", "transshipment", "ex-lake", "ex-river", etc. But this is a matter of no importance except to those who are concerned with precise terminology.

There is nothing in the act which makes a "true proportional" rate lawful or which makes a proportional rate unlawful if it is not of this Simon pure variety. The real question is whether rates, by whatever names they may be called, are lawful which are lower than the corresponding local rates and which are confined in their application to traffic that has had a prior or will have a subsequent movement to or from a point beyond.

One answer to this question, and the one given in all of the petitions, is that the Commission has in many past cases, and consistently, approved and even prescribed rates of this character, and has done so, not only where the prior or subsequent movement was subject to its jurisdiction, but also where it was not, including many situations where the prior or subsequent movement was by contract or private carriers. This is a persuasive answer, but I think it is well to go further and show that these past decisions are sound.

The significant and questionable thing about proportional rates or rates of like nature is that they are normally less than the corresponding local rates. Manifestly this fact does not in itself make them unreasonable under section 1. Whether it makes them unjustly discriminatory under section 2 is a more difficult question. For convenience I quote that section:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges,

demands, collects, or receives from any other person or persons for doing for him or them *a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. (Emphasis supplied.)

As between local rates and lower proportional rates between the same points, the essential questions under section 2 are whether they apply to like kinds of traffic and whether the transportation is under substantially similar circumstances and conditions. Sometimes a dissimilarity in the immediate circumstances and conditions of transportation can be shown, as in the case of the lake-cargo coal rates, where the concentration of deliveries at a very few points makes the service cheaper than that rendered under the local rates, which permit deliveries at many points over a wide terminal area. In other cases, however, as in the present proceeding, no dissimilarity of this character can be shown.

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In a very early case, *New York Board of Trade and Transp.* v. *Pennsylvania R. Co.*, 4 I. C. C. 447, the Commission found it unlawful, under section 2, for railroads to charge less on import traffic from ports to inland destinations than on like domestic traffic from and to the same points. There was no evidence of any difference in the costs of service. The decision was reversed by *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, on the principal ground that the circumstances and conditions, more particularly the commercial and competitive conditions, surrounding the two forms of traffic were dissimilar. Later

decisions of the Supreme Court, however, indicate that the "circumstances and conditions" to which section 2 refers are those which are incident to the transportation service rendered and not those which are extraneous thereto, and that the "exigencies of competition," in particular, do not justify discrimination. *Wight* v. *United States*, 167 U. S. 512; *Interstate Commerce Commission* v. *D., L. & W. R. R. Co.*, 220 U. S. 235; *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 325; *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57; and *A., T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. A recent decision of the court, *United States* v. *Trucking Co.*, 310 U. S. 344, 352-3, has this interesting pronouncement:

> The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when "undue", "unjust", "unfair", and "unreasonable." And the courts have always recognized that Congress intended to commit to the Commission the determination by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages and discrimination.

In a footnote to which reference is made in the last quoted sentence, the court refers to the *Texas & Pacific case*, above cited, as an "apparent exception, at an early date before the function of the Commission had become fully outlined against the background of time and the empiric pattern of litigation."

Nevertheless the Commission, in the exercise of this apparently rather wide discretion, has not since the *Texas & Pacific case* found import or export rates, or other rates in the nature of proportional rates, to be in violation of section 2 because they were lower than

corresponding local rates, and in my judgment with good reason. It may be argued with considerable force that although the traffics to which the two kinds of rates apply are the same in content, the dissimilarity in their origins or destinations and in commercial and competitive conditions prevents them from being a "like kind of traffic" within the meaning of section 2. However, I think the sounder view is that there is an essential dissimilarity in attendant circumstances and conditions as between local traffic and traffic which is being transported part of the way from an origin or to a destination which lies beyond, and that this dissimilarity is not extraneous to the transportation service rendered but incident thereto, for the reasons which follow.

As railroad rates are made, by long-established custom, those for long hauls normally are relatively lower mile for mile than those for shorter hauls, and often to a greater extent than

is justified by the fact that terminal costs are a constant factor. In other words, some preference has commonly been given to the longer hauls, and this has met with rather general approval. This tendency has not been confined to situations where joint rates are in effect. It has also prevailed where the through charges have been on a combination basis and the principle could be given effect by the railroads only through the publication of proportional rates and the like. Nor has it been confined to hauls which are wholly by rail, for it has been extended also, and quite naturally, to hauls which are partly by rail and partly by some other form of transportation, and regardless of whether the latter is subject to the Interstate Commerce Act.

This thought was expressed quite definitely and explicitly in *Central Pennsylvania Coal Producers Assn.* v. *B. & O. R. Co.*, 196 I. C. C. 203, 235-6, as follows:

> Except as to traffic to nonadjacent foreign countries, the operators allege that the maintenance to the ports of Philadelphia and Baltimore of transshipment rates which are different for inside-the-capes than for outside-the-capes traffic, contravenes the provisions of section 2 of the act. As previously stated, *the rail service rendered all transshipment coal is substantially the same.* The coal, which is charged the outside-the-capes rates, other than that which is exported, usually moves to New York Harbor or to New England, and that charged the higher inside-the-capes rates generally moves a relatively short distance by water to points within the respective harbors. *Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed.* We have found on various occasions that proportional rates which vary in amounts depending on the origins or destinations are not unlawful because of that fact. *Southern Kansas Grain Asso.* v. *C. R. I. & P. Ry. Co.*, 139 I. C. C. 641. *Transshipment rates are also similar to export rates in that we have no jurisdiction over the transportation which takes place beyond the transshipment piers.* We have found that the maintenance of different export rates from the same origin to the same port, dependent upon the foreign destination, is not unlawful. *Western Export Iron and Steel Case*, 43 I. C. C. 129. In *Detroit* v. *C. & O. Ry. Co.*, 77 I. C. C. 98, division 1 found, among other things, that a rate on coal from mines in West Virginia to Toledo, for transshipment to Detroit, Mich., which was higher than on coal destined to certain west-bank Lake Michigan and Lake Superior ports, was not unjustly discriminatory. It is significant that transshipment rates to the ports of Philadelphia and Baltimore, varying according to whether the destination of the traffic was within or beyond the

capes, *have been maintained for over a quarter of a century without complaint under section 2* of the act, although they have been assailed under other sections of the act by various interests, including these complainants. The latter, in the

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Eastern Bituminous Coal case, sought outside-the-capes rates that would have widened the spread under the inside-the-capes rates that then existed and still exist. Upon the facts of record we are of the view that the transshipment rates assailed are not unjustly discriminatory. (Emphasis supplied.)

It will be noted that the railroads there maintained "transshipment" rates on coal which were in the nature of proportional rates and lower than the corresponding local rates; that there were two sets of these "transshipment" rates, one lower than the other, dependent on the ultimate destinations of the coal at the end of the water haul, although substantially the same rail service was rendered all transshipment coal; and that the transportation by water was not subject to our jurisdiction. Yet the Commission found that there was no violation of section 2, either in the fact that the transshipment rates were lower than the local rates or in the fact that one set of transshipment rates was lower than the other. The reason given was that such rates "like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed."

Stating the principle in another way, while the transportation service rendered between two points under a local rate and under a proportional or other like rate may be physically identical, yet it is not performed under circumstances and conditions which are similar in

the one case and in the other, for the transportation for which the proportional or other like rate is charged is part of a through movement from or to a point beyond, whereas the transportation for which the local rate is charged is complete in and of itself. It is quite true that in those instances where the two services are physically identical, there is no difference in cost which can justify making the proportional or other like rate lower than the local rate, except such as may possibly result from a difference in the volume of movement; but cost of service is not the only factor that may properly be given weight in the making of railroad rates, as we have often recognized. The practice of charging less for transportation which is a part of a longer through haul than for strictly local transportation between the same points has the sanction of accepted custom, and in my judgment it is the chief justification for the proportional rates or rates of like nature, lower than the corresponding local rates, which we have in so many cases approved or prescribed, although difference in cost of service has often been an additional justification.

Turning from section 2 to section 3, the same considerations apply, with the addition that the exigencies of competition may also justify differences in rates under the latter section, and, to establish violation, proof of injury from the differences is also necessary. Those who are charged the higher local rates are seldom able to furnish such proof, because of the lack of a competitive relation with those who pay the lower rates.

These are the reasons, stated explicitly and fully to the best of my ability, why I agree with the reversal of the conclusion of division 2 "that the proportional rates here in issue have never been applicable on this barge traffic moving

on unfiled rates." Lest there be misunderstanding, however, let me say that it does not follow from these reasons that a proportional rate or rate of like nature may not be unreasonable under section 1 or that it may not, under certain conditions, violate either section 2 or section 3; nor does it follow that such rates must always be established. They merely go to the point that the mere fact that such rates are lower than corresponding local rates does not in itself prove a violation of any of these sections.

The present report makes the further finding that "The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful." With this I do not agree. It is prefaced by a brief discussion which I quote here for convenience in reference. The contention that the schedules are unlawful is, according to the report, based primarily on the result that "the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same." It is said that this is "also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges." Then follows this comment:

> To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this

proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations.

To trunk-line and New England territories, the reshipping rates now apply uniformly on ex-rail and ex-water shipments, and they do not differ with the length or character of the inbound haul or with the origin territory. To central territory, there are three different sets of reshipping rates. Those designated "Trans-Mississippi" are the lowest and apply on ex-rail grain from territory of which Kansas City is representative. Those designated "Illinois Reshipping" are somewhat higher and apply on ex-rail grain from origins in Illinois. Those designated "Northwest" are uniformly 3 cents higher than the "Trans-Mississippi" rates and are generally higher than the "Illinois Reshipping" rates. They apply on ex-rail grain from territory of which Minneapolis is representative, and also on both ex-lake and ex-barge grain. After the proposed schedules take effect, the reshipping rates will cease to apply, with very minor exceptions, on all ex-barge grain, but will continue to apply, as above indicated, on all ex-rail and ex-lake grain.

The report states that the "proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the

profits of the Chicago elevator operators." I do not so understand the evidence. The table on page 361 of the prior report shows clearly that the farmers are paid the Chicago market price less the "costs incident to making delivery at Chicago," which consist mainly of

the transportation charges. It follows that the farmers whose grain can be transported by barge receive the benefit, in the prices paid for their grain, of the low barge rates, and that this benefit does not go to the Chicago elevator operator. For this reason, ex-barge grain has exactly the same value in the elevator as ex-rail or ex-lake grain, and naturally it will not be moved eastbound on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates.

While it is true, to some extent, that the combination of the barge rate to Chicago plus the local rate eastbound is lower than the combination of the rail rate from the same origin point to Chicago plus the reshipping rate eastbound, this fact will not enable the ex-barge grain to move from Chicago on the local rate, because the benefit of the low barge rate now goes to the farmer and cannot be used by the elevator operator to offset the higher level of the local rates as compared with the reshipping rates. In other words, the grain is brought by the Chicago operator and is shipped thereto without knowledge of where it will go after it reaches Chicago, and the through combination rates to eastern points do not enter into the transaction. This is, of course, true of practically all grain shipments to primary markets, and the through transportation which is reflected in proportional or reshipping rates therefrom is to this extent fictional; but it is no more fictional in the case of this ex-barge grain at Chicago than it is of grain which moves from the farms into the primary market of Kansas City.

As I understand it, the effect of the proposed schedules, unless the prices paid to the farmers whose grain is barged are reduced, will be to limit the outlet of the ex-barge grain to local consumption in Chicago and to

the lake and lake-rail routes to eastern points. If this outlet is sufficient, the situation will not be changed, except that the rail respondents will be deprived of the ex-barge traffic. If it is not sufficient, however, as in the winter months when the lake routes are closed, the producers of the grain which is now barged will either have to ship by rail to Chicago, with a consequent sacrifice in prices received, or sustain a similar sacrifice by accepting less from Chicago buyers for barged grain than they now receive. It is significant that a witness for respondents testified that the schedules under suspension were proposed "with the hope that we could drive this business off the water and back onto the rails where it belongs." If this hope is realized, the farmers who now ship by barge will certainly suffer in the prices paid for their grain. However, the effect of the proposed schedules is not the primary question, but whether they are in violation of the law.

In view of the long continuance of the reshipping rates and having in mind the level of the proportional rates which we have prescribed on grain in western territory, it can be urged with force that the local rates are unreasonable, under

section 1, for application on this ex-barge grain. However it is unnecessary to go into this, if, as I believe, the proposed schedules are clearly unlawful under sections 2 and 3.

Considering section 2, it is conceded that the "physical carriage beyond the reshipping point is substantially the same" on the ex-barge grain as on the ex-rail and ex-lake grain, and the traffic in all three instances is clearly "like traffic." So far as the circumstances and

conditions are concerned which relate to the haul beyond the reshipping point when considered as a part of a through haul, the reasoning of the report seems to be that, comparing the ex-barge with the ex-rail and ex-lake grain, these circumstances and conditions are dissimilar because of the differences in the "relative length and nature of the inbound and through service." Therefore it is not unlawful, under section 2, to charge more for an eastbound haul of ex-barge grain from Chicago than for an identical haul of ex-rail or ex-lake grain.

While we have found that proportional rates or rates of like nature may lawfully vary with the length and nature of the haul to or from the point beyond, it is not necessary that there be such a variance, and the fact is that ordinarily there is none. This is as true of the proportional rates which we have prescribed as of those which the carriers have voluntarily established. Here there is now no variance whatever in the reshipping rates to trunk-line and New England territories. They are the same whether the inbound haul is by rail or by water or whether it is short or long. It is now proposed to cancel the application of these rates to ex-barge traffic, even if it moves from such comparatively distant points as Kansas City and St. Louis, but to continue to apply them to ex-rail or ex-lake traffic regardless of the length and nature of the inbound haul. Clearly if the rule of variance is to be followed at all, it must be equally applied, and it cannot be invoked to defend a variation which is wholly inconsistent with the rate structure as a whole.

When it comes to the reshipping rates to central territory, there is a variation which is now dependent partly on the general origin territory in which the grain

originates and partly on whether it moves by rail or by water. To all ex-water traffic, however, reshipping rates now apply which are as high as any of the lot, except to a relatively few points in central territory, to which somewhat higher reshipping rates apply on grain originating in Illinois and moved by rail to Chicago. The "Northwest" rates, which are the ones which apply on the ex-water traffic, are uniformly 3 cents higher than the "Trans-Mississippi" rates, and they average higher than the "Illinois Reshipping" rates. They apply to the ex-lake traffic whether it originates at Duluth or at some relatively nearby port on Lake Michigan, and they apply on the ex-barge traffic whether it originates at Kansas City or at some point quite near to Chicago on the Illinois Waterway. Much the same is true of the reshipping rates which apply on the ex-rail grain. It could be argued with force that the present rate situation is unjustly discriminatory as respects the ex-barge grain, for if it originates at Kansas City or St. Louis, it is charged reshipping rates which are 3 cents higher than those which apply on ex-rail grain from the same points, and if it originates

in Illinois, it is charged reshipping rates which average materially higher than those which apply on ex-rail grain from the same points or points in the same general territory. Certainly there can be no defense, based on the length and nature of the inbound haul or any other circumstance, for depriving the ex-barge grain entirely of the benefits of the reshipping rates while permitting such rates, of the same or a lower level, to apply on ex-rail and ex-lake grain whatever the point of origin or length of the inbound haul.

Clearly this is a case where it is proposed to charge

persons shipping ex-barge grain a greater compensation than is charged other persons shipping ex-rail or ex-lake grain for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and clearly, also, this would result in a violation of section 2.

The same facts which spell a violation of section 2, if the proposed schedules become effective, likewise spell a violation of section 3, when coupled with the positive evidence that these schedules will result in injury to the producers of ex-barge grain, at least during the season when transportation by lake from Chicago is not available. In this connection it was pointed out in the prior report that under section 3(1), as amended by the Transportation Act of 1940, "undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful." The undue prejudice with which I am concerned, however, is not to the operators of the barge lines but to the shippers of the grain.

I realize that under the doctrine enunciated by the Supreme Court in its recent decision in *United States v. Trucking Co., supra*, any decision which the Commission reaches in its wisdom with respect to a violation of section 2 or section 3 is likely to be sustained, if questioned in court. That, however, is an additional reason for great care in arriving at our decision.

Question has been as to whether the failure to apply reshipping rates to grain which has been trucked into Chicago results in violation of sections 2 and 3. This question is not here in issue. My tentative opinion upon it is that where the movement by truck is from territory from which grain can be moved by rail or by water

to Chicago subject to the application of the reshipping rates eastbound, the failure to apply such rates to the grain brought in by truck does result in violation of sections 2 and 3, provided adequate provisions for the identification and policing of such shipments are practicable and enforceable. The prior report reflected doubt as to whether such provisions are practicable with respect to the ex-barge grain, but in the present report it seems to be conceded that they are practicable with respect to such grain, although they may not have been properly enforced in the past, and with this view I agree.

I. & S. Docket No. 4718—Sheet 17.

ALLDREDGE, *Commissioner*, dissenting:

The issues in this proceeding were defined by the suspension order. This order brought in question the lawfulness of the suspended schedules. It did not, of course, present any issue concerning the lawfulness of respondents' rates or practices in the present or past. The section 6 finding in the prior report, therefore, was not in response to any issue presented, was in disregard of the rights of all of the parties to a hearing, and was, therefore, clearly improper. Of course, I have no objection to the present report to the extent that the finding is rescinded, but generally I disagree for reasons stated in my dissenting expression in the prior report.

I am authorized to state that Commissioners PORTER and JOHNSON join in this expression.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of December, A. D. 1941

Investigation and Suspension Docket No. 4718

Grain Proportionals Ex-Barge to Official Territory

It appearing, That on July 31, 1941, division 2 made and filed its report and order in the above-entitled proceeding, and that subsequently certain petitions for reconsideration and replies to said petitions, enumerated in the report of the Commission of this date, were filed;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed its report on reconsideration of the record in the light of said petitions and replies and our prior decisions, in which report the findings of division 2 are modified and clarified in certain respects, and which report, together with said report of division 2, are hereby referred to and made parts hereof:

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of the schedules enumerated and described in said order, be, and it is hereby, vacated and set aside as of December 22, 1941, and that this proceeding be discontinued.

By the Commission.

(Seal)

W. P. BARTEL,
Secretary.

[fol. 128] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

AMENDED COMPLAINT—Filed January 16, 1942

Plaintiff for its amended complaint served pursuant to an order of this Court, entered January 16, 1942, alleges:

1. Paragraphs 1 to 3, inclusive, and paragraphs 5 to 21, inclusive, together with all appendices, are adopted and incorporated herein by reference from plaintiff's complaint;

2. In place of paragraph 4 in plaintiff's complaint, plaintiff alleges that defendant, Erie Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the state of New York; its principal office and place of business is at Cleveland, in the state of Ohio; it is the successor by consolidation to the properties of the Chicago & Erie Railroad Company; it operates lines of railroad for the carriage of freight throughout the states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, and other states in the United States.

Wherefore, plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order until the final determination of this cause and that [fols. 129-130] upon final hearing a decree be entered enjoining said carrier defendants from making effective said change in tariffs unless and until approved as lawful by a lawful order of the Commission; and

(c) That plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Nuel D. Belnap, Walter, Burchmore & Belnap, Attorneys for Plaintiff.

Robert N. Burchmore, Nuel D. Belnap, 2106 Field Building, Chicago, Illinois.

[fol. 131] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Answer of Interstate Commerce Commission—Filed January 23, 1942

Now comes the Interstate Commerce Commission, one of the defendants herein, by its counsel, and in answer to the Complaint filed in the above-entitled proceedings respectfully represents:

1. For the purposes of this suit the Commission admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Complaint.

2. The Commission denies the allegations of paragraph 20 of the complaint except that it admits that on December 1, 1941, the Commission issued its report and order on reconsideration, said report and order being reproduced as Appendix D of the Complaint.

3. The Commission denies the allegations of the first paragraph numbered 21 of the Complaint and further denies the materiality of any of the matters therein alleged.

4. The Commission denies each and every allegation of the second of the two paragraphs of the Complaint numbered 21.

[fol. 132] 5. Further answering the allegations of the Complaint, the Commission alleges that in the proceedings in which the aforesaid reports and orders were made and entered, the parties thereto, including the plaintiff herein,

were and each of them was accorded the full hearing provided by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff by its counsel; that in briefs filed in said proceedings and in oral argument questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including questions raised by plaintiff in this suit, and the Commission determined said matters and entered and served upon plaintiff and other interested parties its reports and orders; that said reports and orders include the Commission's findings of fact, conclusions and requirements in the premises, and that upon the evidence aforesaid the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports support the order here in question and that said findings and conclusions were and are and each of them was and is fully supported and justified by the evidence adduced in said proceedings.

The Commission further alleges that in making said orders it considered and weighed carefully each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings and their respective counsel, including matters covered by the allegations of the Complaint herein.

[fol. 133] The Commission further alleges that said orders were not made or entered by it either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support them; that in making said orders the Commission did not exceed its authority and the Commission denies each and all the allegations to the contrary contained in said Complaint.

Except as herein expressly admitted the Commission denies each and all of the allegations contained in the Complaint insofar as they conflict with the allegations herein or with the statements, findings, determinations or conclusions of fact included in the aforesaid reports of July 31, 1941, and December 1, 1941, attached to said Complaint as Appendices B and D thereof, respectively, which said

reports together with the orders issued therewith are hereby referred to and made part of this answer.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, The Complaint herein should be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fols. 134-135] *Duly sworn to by Walter M. W. Splawn. Jurat omitted in printing.*

[fol. 136] In District Court of the United States

Civil Action. No. 3725

[Title omitted]

Answer of the United States of America—Filed February 5, 1942

Comes now the United States of America, by its counsel, and for answer to the complaint herein says that the United States admits the allegations of Paragraphs 1 to 19, inclusive, and the allegation of Paragraph 20 that on December 1, 1941 the Commission issued its report and order on reconsideration which are reproduced as Appendix D of the complaint.

For Further Answer to the remaining portions of the complaint the United States makes the following statements and representations:

1. This is an action against the United States to set aside an order of the Interstate Commerce Commission instituted pursuant to the provisions of 28 U. S. C. 41 (28), 45 and 46.

2. Under the provisions of 28 U. S. C. 45 (a) the Attorney General has charge and control of the interests of the Government in this action. This section, however, does not impose upon the Attorney General the duty of defending the Commission's order in all cases, nor confer authority on him to dispose of or discontinue such an action as this over

[fol. 137] the objection of other parties; and it is expressly provided in such section that such other parties may prosecute, defend, or continue the proceeding unaffected by the action or non-action of the Attorney General herein.

3. Under the provisions of Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1291, the Secretary of Agriculture was authorized to intervene, and did intervene, in the proceeding before the Interstate Commerce Commission; and he is further given the rights of a party before the Commission to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. Pursuant to said section and to 28 U. S. C. 45 (a), the Secretary of Agriculture has served notice of intervention as a plaintiff in this action and has applied for leave to file a complaint. As a plaintiff, the Secretary of Agriculture challenges the validity of the order of the Interstate Commerce Commission and prays that it be set aside.

4. The Interstate Commerce Commission has been joined as a party defendant, has answered the complaint by asserting the validity of its order, and will be represented at the hearing by its own attorneys.

5. For the Attorney General to defend the order of the Interstate Commerce Commission would require him to assert a position on behalf of the United States which is attacked by the head of a coordinate branch of the Executive Department of the Government, and possibly to assume, at some stage of this proceeding, the position of advocate for both sides of the controversy.

6. Under the circumstances recited, and in view of the adequate representation of the interests of the United [fol. 138] States in this case, wherever they may lie, the remaining allegations of the complaint are neither admitted nor denied.

Frank Coleman, Smith R. Brittingham, Jr., Special Assistants to the Attorney General, Counsel for the United States.

Thurman Arnold, Assistant Attorney General. J. Albert Woll, United States Attorney.

[fols. 139-141] I certify that a copy of the foregoing answer was this day mailed to the following persons:

Nuel Belnap, Esq., Walter, Burchmore and Belnap, 2106 Field Building, Chicago, Illinois, Counsel for plaintiff. Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington, D. C., Counsel for Interstate Commerce Commission. Mastin G. White, Esq., Solicitor, U. S. Department of Agriculture, Washington, D. C., Counsel for Intervening Plaintiff, Secretary of Agriculture. Frank H. Cole, Jr., and Erich W. Lademann, Esqs., Attorneys, Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois. Leo P. Day, Esq., Attorney, New York Central Railroad Company, Chicago, Illinois. Horace L. Walker and Bryce L. Hamilton, Esqs., Attorneys, New York, Chicago and St. Louis Railroad Company, 1400 First National Bank Building, Chicago, Illinois. Theodore Schmidt and George F. Dyche, Esqs., Attorneys, Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois. Horace L. Walker and William G. Wise, Esqs., Attorneys, Chesapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois, Counsel for the Several Railroad Defendants.

Smith R. Brittingham, Jr., Special Assistant to the Attorney General.

February 2, 1942.

[fol. 142] In District Court of the United States

Civil Action File No. 3725

[Title omitted]

Answer of the Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, The Chesapeake and Ohio Railway Company—Filed January 6, 1942

Now come The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and Ohio Railway Company, by their respective attorneys, and file this their joint and several answer to the complaint herein, and say:

First Defense

The assailed order of the Interstate Commerce Commission is not the character of order which this Court is authorized to enjoin or set aside, and this Court lacks jurisdiction over the subject matter in that regard.

[fol. 143] Second Defense

This Court has no jurisdiction to enjoin these defendants, or any of them, from making effective or enforcing any change or changes in their schedules of rates for the transportation of property by rail in interstate commerce.

Third Defense

Plaintiff does not have the interest or standing requisite to enable it to bring and maintain this suit.

Fourth Defense

The complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted by this Court.

Fifth Defense

1. These defendants, in answer to paragraph 1 of said complaint, deny the allegations of the last sentence therein.

2. These defendants admit the allegations of paragraphs 2, 11, 12, 13, 15, 16, 17, 18 and 19 of said complaint.

3. These defendants, in answer to paragraphs 3, 5, 6, 7, 8 and 9 of said complaint, admit that they are corporations as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

4. These defendants, in answer to paragraph 10 of said complaint, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein, except defendants admit that plain-
[fol. 144] tiff conducts interstate transportation on a port-to-port basis without any common arrangement with rail carriers beyond Chicago for through transportation.

5. These defendants, in answer to paragraph 14 of said complaint, admit that the Interstate Commerce Act was amended by the Transportation Act of 1940 as alleged therein, and further aver that plaintiff has failed to call

the Court's attention to other amendments made to the Interstate Commerce Act by the Transportation Act of 1940, among which are the amendments now appearing as Section 3, paragraph (1) and Section 303, paragraphs (b) and (c).

6. These defendants, in answer to paragraph 20 of said complaint, admit the allegations of the first two sentences therein; and deny the allegations of the last sentence therein.

7. These defendants, in answer to the first of the two paragraphs of said complaint numbered 21, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the second sentence therein; and deny all remaining allegations therein.

8. These defendants, in answer to the second of the two paragraphs of said complaint numbered 21, deny each and every allegation therein.

9. Further answering, these defendants deny each and every allegation of said complaint not herein specifically admitted or otherwise specifically answered; deny that plaintiff is entitled to the relief prayed for in said complaint, or any part thereof, or any relief whatsoever.

Wherefore, these defendants pray that they, and each of them, be dismissed as defendants in this cause, that said [fols. 145-146] complaint be dismissed, and that they have and recover their costs.

Frank H. Cole, Jr., Erich W. Lademann, Attorneys for The Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois; Horace L. Walker, Bryce L. Hamilton, Attorneys for The New York, Chicago and St. Louis Railroad Company, 1400 First National Bank Building, Chicago, Illinois; Leo P. Day, Attorney for The New York Central Railroad Company, La Salle Street Station, Chicago, Illinois; Theodore Schmidt, George F. Dyche, Attorneys for The Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois; Horace L. Walker, William G. Wise, Attorneys for The Cheapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois.

Receipt is hereby acknowledged of a copy of the foregoing answer this 6th day of January, A. D. 1942.

Robert W. Burchmne, Nuel D. Belnap, Attorneys for Plaintiff.

[fol. 147] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Petition of Intervention of the Secretary of Agriculture —Filed February 6, 1942

To the Honorable the Judges of Said Court:

The Secretary of Agriculture of the United States moves for leave to intervene as a plaintiff in this action, in order to assert the grounds of complaint set forth in his proposed complaint, a copy of which is attached, pursuant to the [fol. 148] authority contained in Section 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 36; 7 U. S. C. 1940 ed. 1291), and Section 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940 ed. 45a).

Mastin G. White, Solicitor, United States Department of Agriculture, Washington, D. C.

Haskell Donoho, Of Counsel.

Certificate of Service

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 2d day of February, 1942.

Haskell Donoho, Senior Attorney, United States Department of Agriculture, Washington, D. C.

[fol. 149] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

COMPLAINT—Filed February 6, 1942

1. The Secretary of Agriculture of the United States, intervening plaintiff, adopts by reference the complaint of the original plaintiffs, Inland Waterways Corporation, with the exception of the first of the two paragraphs numbered 21 thereof, and by way of further complaint states:

[fol. 150] 2. The Secretary is a party in the case captioned Grain Proportionals, Ex-Barge to Official Territory, Investigation and Suspension Docket No. 4718, which culminated in the order of the Commission of December 1, 1941.

3. If the order of the Commission, mentioned above, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

4. If the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

5. If the order, referred to above, becomes effective, it will result in the shifting of grain from barges to the railroads during a period of national crisis when there is every reason to believe that railroad facilities will be taxed to the utmost.

6. The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

[fols. 151-152] 7. The order of the Interstate Commerce Commission, referred to above, is unlawful and void and beyond the power of the Commission to make in that the Commission erred in failing to reexamine, in the light of

the provisions of Section 303(b) of the Transportation Act of 1940, its old decisions which indicated that the Commission should not permit the use of rail proportionals and reshipping grain rates east of Chicago on water-borne shipments reaching Chicago via carriers which had not filed tariffs with the Interstate Commerce Commission or some other appropriate regulatory agency.

Wherefore, intervening plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until the final determination of this cause, and that, upon the final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted, Mastin F. White, Solicitor, United States Department of Agriculture, Washington, D. C.

By direction of the Secretary.

Haskell Donoho, Of Counsel.

[fol. 153] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Notice—Filed February 6, 1942

To: Mr. Daniel H. Kunkel, Attorney, Interstate Commerce Commission, Washington, D. C.; Mr. J. Albert Woll, U. S. District Attorney, 450 U. S. Courthouse, Chicago, Illinois; Mr. Frank H. Cole, Jr., Mr. Erich W. Lademann, Attorneys, Baltimore & Ohio R. R. Co., 315 Grand Central Station, Chicago, Illinois; Mr. Clyde E. Shorey, Attorney, Erie Railroad, 135 S. LaSalle St., (R. 2130) Chicago, Illinois; Mr. Albert B. Enoch, Ass't Gen'l Sol., C. R. I. & P. R. R. Co., 1025 LaSalle St. Station, Chicago, Illinois; Mr. Chas. B. Bowling, Chief, Transportation Division, United States Department of Agriculture, Washington, D. C.; Honorable Francis Biddle, Attorney General of the United States, Department of Justice, Washington, D. C.; Mr. Daniel W. Knowlton, Chief Counsel, Bureau of Law, Interstate Commerce Commission, Washington, D. C.; Mr. Leo P. Day, Attorney, New York Central System, 525 La Salle St. Station, Chicago, Illinois; Mr. Horace L. Walker, Mr. Bryce L. Hamilton, Attorneys for the N. Y. C. & St. L. R. R. Co., 1400 First National Bank Bldg., Chicago, Illinois; Mr. Theodore Schmidt, Mr. George F. Dyche, Attorneys for Pennsylvania R. R. Co., 652 Union Station, Chicago, Illinois; Mr. Horace L. Walker, Mr. William G. Wise, Attorneys for C. & O. Ry. Co., 69 W. Washington Street, Chicago, Illinois; Mr. Haskell Donoho, Senior Attorney, United State Department of Agriculture, Washington, D. C.; Mr. S. R. Brittingham, Jr., Special Assistant to the Attorney General of the United States, Department of Justice, Washington, D. C.; Walter Burchmore & Belnap, 2106 Field Building, Chicago, Illinois:

[fol. 154] Please Be Advised and Take Notice that the undersigned on February 6, 1942, at the opening of court in the forenoon or as soon thereafter as counsel may be heard before the judges before whom said cause is pending at the room occupied by them as a court room in the Federal Building in the City of Chicago, County of Cook, State

of Illinois, and District aforesaid, will present the hereunto attached motion for leave to intervene and become a party, at which time and place you may appear if you are so advised.

A. L. Mechling, doing business as A. L. Mechling Barge Line, by Edward B. Hayes, His Attorney.

[fol. 155] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Petition of Intervention of A. L. Mechling, Doing Business as A. L. Mechling Barge Line—Filed February 6, 1942

To the Honorable Judges of Said Court:

A. L. Mechling, doing business as A. L. Mechling Barge Line, moves for leave to intervene as a plaintiff in this action in order to assert the grounds of complaint set forth in his proposed complaint, a copy of which is attached.

A. L. Mechling, doing business as A. L. Mechling Barge Line, by Edward B. Hayes, Attorney.

Edward B. Hayes, of Counsel.

[fol. 156] Certificate of Service

I hereby certify that I this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each such party.

Dated at Chicago, Illinois, this 31st day of January, 1942.

Edward B. Hayes.

[fol. 157] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Complaint—Filed February 6, 1942

1. A. L. Mechling, doing business as A. L. Mechling Barge Line, adopts by reference the complaint of the original

plaintiff, Inland Waterways Corporation, and by way of further complaint says:

2. This complainant filed his petition for a hearing in the case captioned Grain Proportionals, Ex-Barge to Official Territory, Investigation and Suspension Docket No. 4718, and for rehearing of the order of the Commission of December 1, 1941, which petition was denied by the Commission by order dated January 21, 1942. True copies of complainant's said petition and of said order of the Commission denying the same are hereto attached as Appendix [fol. 158] I and Appendix II, respectively.

3. This complainant is a carrier of grain by barge to Chicago, Illinois, and other rate break points in question.

4. If the suspended schedules should become effective the situation would then be that the present proportional rates for the on-haul would continue in effect on grain brought into Chicago and other rate break points by rail and lake vessel, but the higher local rates would apply on grain brought in by barge over the Illinois Waterways.

5. Complainant's business is the bringing of grain by barge to Chicago and other rate break points in question by barge, for reshipment there to interstate and foreign destinations. That is the only authority granted him by the Commission. Reference is made to the Commission's order of November 6, 1941 (quoted at the end of Appendix I hereof).

6. The proposed schedules discriminate against the connecting line of this complainant; they were adopted for the purpose of putting this complainant and other barge carriers similarly engaged out of the business.

7. The record on the facts before the Commission was made and closed on and before January 26, 1942. At that time the Commission construed the Interstate Commerce Act to permit rail lines to discriminate against the connecting lines of unregulated water carrier such as complainant then was. After the record on the facts closed before the Commision, Congress amended the Interstate Commerce Act by the Transportation Act of 1940, effective September 18, 1940, whereby discrimination by a rail line against the connecting line of a common carrier by water subject

[fol. 159] to Part III was forbidden (Section 3(4)) and a new and mandatory National Transportation Policy was enacted (preceding Section 1). Later, and on November 6, 1941, by its said order of that date, the Commission held this complainant to be a common carrier by water subject to Part III and a certificate conforming to said order thereafter issued to and is held by this complainant.

8. This complainant could not be heard to assert his rights under the Transportation Act of 1940 when the record on the facts was made and closed before the Commission: that act had not yet been passed and those rights did no then exist. Notwithstanding complainant applied to the Commission for a hearing after his rights under that subsequent enactment were settled (and before the Commission's order of December 1, 1941, became effective) it refused to permit him to be heard. The complaint adopts by reference the averments and offers of proof made by him before the Commission in his said petition (Appendix I hereof).

9. The Commission acted arbitrarily and contrary to the Interstate Commerce Act as amended by the Transportation Act of 1940 in the respects aforesaid, and further:

(a) In assuming to sustain the proposed schedules without taking any evidence whatever either on the said question of discrimination, or the said question of violation of the new National Transportation Policy, both of which questions arose under the Transportation Act of 1940 after the record on the facts made before the Commission had been closed;

(b) In denying this complainant a hearing on the facts as to his rights under the Interstate Commerce Act as amended by the Transportation Act of 1940, and especially Section 3 (4) thereof and the National Transportation Policy preceding Section 1, both enacted since the record on the facts on which the Commission's order of December 1, 1941, was predicated had been made and closed;

[fol. 160] (c) In sustaining the proposed schedules as lawful, although before the Commission's order to that effect had been entered on December 1, 1941, the Transportation Act of 1940 had enacted said new National Trans-

portation Policy and forbidden discrimination against the connecting lines of any common carrier by water subject to Part III, and no opportunity had been afforded to any one to present evidence that the proposed schedules were in violation of the law as so amended, and complainant offered to present such evidence to the Commission and prayed for the opportunity to do so;

(d) In sustaining said proposed schedules notwithstanding they affirmatively appeared (by the undisputed evidence of the rail lines proposing them) to have been designed and proposed solely for the purpose of putting barge carriers such as this complainant out of the business, and notwithstanding the amended law at the time when the Commission ordered the approval of the proposed schedules, forbade rail lines to discriminate in their rates against carriers by water such as this complainant;

(e) In the respects heretofore specified herein and in the complaint of the original complainant.

10. In the premises this complainant has been deprived of a hearing, contrary to equity and contrary to Article V of the Amendments to the Constitution of the United States.

Wherefore, this complainant prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order until the final determination of this cause and that upon final hearing a decree be entered enjoining said carrier defendants from making effective said change in tariffs [fol. 161] unles and until approved as lawful by a lawful order of the Commission; and

(c) That the complainant have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Kremer, Branand & Hayes, Attorneys for A. L. Mechling, doing business as A. L. Mechling Barge Line.

Edward B. Hayes, 1016 Insurance Exchange Building, Chicago, Illinois.

[fol. 162] APPENDIX I TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

I. & S. Docket

No. 4718

PETITION AND SPECIAL APPEARANCE OF A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, FOR LEAVE TO INTERVENE AND FOR REHEARING AND RECONSIDERATION OF THE REPORT HEREIN

[fol. 163] Now comes A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, specially appearing, and under that special appearance for the purposes hereof only, respectfully represents and prays:

This Petitioner could not be heard when the record on the facts was made and closed herein in January, 1940, to assert his rights (and necessities) as they now exist under the subsequently enacted Transportation Act of 1940.

Petitioner is now a regulated common carrier of grain by barge to Chicago, Illinois (and other rate break points in question) for reshipment there to interstate and foreign destinations, under authority of the act mentioned, and in conformity with its provisions, with published rates for that service on file with this Commission.

After Petitioner was held to be a common carrier subject to Part III of the Interstate Commerce Act, as amended by the Transportation Act of 1940 (which occurred subsequent

to the report of Division 2 herein) Petitioner filed a petition herein, and attached as an exhibit thereto the order of Division 4 in docket No. W-630, holding him to be a common [fol. 164] carrier subject to Part III (which petition and exhibit, part of the files and records of this Commission in the proceeding, are hereby referred to and made part hereof by such reference as fully and with the same force and effect as though set out verbatim herein) and gave notice thereof on December 12, 1941.

In and by said petition, Petitioner set forth among other things (and now again sets forth) his rights under the Transportation Act of 1940 and especially: paragraph (e) of Section 5, thereof, amending paragraph 4 of Section 3 of the Interstate Commerce Act; Part III of the Interstate Commerce Act as amended by the Transportation Act of 1940; and the new "National Transportation Policy," made mandatory by the Transportation Act of 1940. And Petitioner shows that the rate proposal in question made prior to said Transportation Act of 1940, would if it ever became effective, violate his said rights—rights on which he had never been heard nor had any opportunity to be heard, inasmuch as the Transportation Act of 1940 had not been passed and those rights did not exist when the hearings herein on the facts were held and closed.

In and by his said petition, Peti-oner prayed (and now again prays) that the rate proposal in question should be held unlawful, in view of the change in the law effected by the Transportation Act of 1940, without further evidence; and furt:er, if that might not be done, Petitioner then prayed that this Commission would notice the said report and order of Division 4 holding him to be a common carrier subject to Part III of the Interstate Commerce Act, as amended after the hearings herein by the Transportation Act of 1940 (which prayer is hereby renewed); and further, if notice could not be taken of said order of Division 4, [fol. 165] then Petitioner prayed that he might offer the same in evidence herein (which offer and prayer Petitioner hereby renews); and further, if said order of Division 4 could not be noticed, or if this Commission felt that the report of Division 2 herein, approving said proposal, could not be reversed without further factual information, then that the Petitioner might have leave to be heard and present evidence in support of his rights under the Transpor-

tation Act of 1940, and to the proposition that said proposal as to him is illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940 (and that prayer is hereby renewed).

Since the report of Division 2 herein, the Commission has made a report and order herein (which, on information and belief, were not received even by those who were parties thereto until about December 15, 1941) wherein, by a majority of seven to four, the Commission approved said proposal. Said order is not effective until December 22, 1941.

Petitioner shows that said proposal, if it should become effective would take his said rights under the Interstate Commerce Act as amended by the Transportation Act of 1940, upon which he has never had opportunity to present evidence and be heard, and particularly: that whereas, prior to said Transportation Act of 1940, the Interstate Commerce Act had been construed not to forbid discrimination in a rail rate against the connecting line of an unregulated carrier (and Petitioner was an unregulated carrier prior to said Act) the amendment of Section 3 made by said act now specifically forbids discrimination against the connecting line of common carrier by water subject to Part III (created by said amending act) and Petitioner has now been held, since the report of Division 2 herein, to [fol. 166] be and now is a common carrier by water subject to Part III; that the said amending act enacts a new mandatory "National Transportation Policy" requiring administration of the Interstate Commerce Act as so amended (including said amended paragraph 4 of Section 3) to be fair and impartial to all modes of transportation subject to the provisions of the Act, and also for the first time subjects water carriers as such to the Interstate Commerce Act, and also requires administration of the Interstate Commerce Act as so amended (including said amended paragraph 4 of Section 3) to recognize and preverse the inherent advantages of each form of transportation including, for the first time, water transportation, and also requires administration of the Interstate Commerce Act as so amended to foster sound economic conditions among the several carriers, including for the first time water carriers and to develop, coordinate and preserve a national transportation system, including for the first time water trans-

portation therein, adequate to the needs of commerce and the national defense, and also to encourage establishment and maintenance of reasonable charges without unfair or destructive competitive practices.

In event the Commission is of opinion that the rate proposal in question should not be disapproved as unlawful under the subsequently enacted Transportation Act of 1940 upon the record made before that act was passed, nor upon notice taken of the matters found and concluded by the said report of Division 4 finding Petitioner to be a common carrier by water subject to Part III of that subsequent enactment, then Petitioner offers to show and in such event prays for a hearing and opportunity to show:

The order of Division 4 aforesaid.

Discrimination against him by said rate proposal.

[fol. 167] That the business of dealing in grain reshipped from the rate break points in question is so highly competitive that ex-barge grain could not be shipped on from the rate-break points by rail under the rate proposal (whereby combination barge-rail rates are higher than the all rail combinations).

That no ex-barge grain would move by rail from the rate-break points in question to New England or Trunk Line Territory destinations under the proposal.

That lake transportation furnishes no escape from any of the rate-break points reached by Petitioner except Chicago, Illinois; and that, as to Chicago, lake transportation furnishes no escape for ex-barge grain during the season of closed lake navigation which lasts about five months of each year (whereas Petitioner's operation is a year-round operation) and is inadequate even during the summer.

That if the proposal should become effective Petitioner's business would be crippled.

That the avowed purpose and effect of the proposal is to eliminate barge transportation of grain to Chicago contrary to the Transportation Act of 1940 and the provisions thereof heretofore mentioned.

That the penalty imposed by the proposal on the shipment of grain by barge to the rate-break points in question is not intended to be, and is not, actually or fairly related [fol. 168] to any difference in cost of rendering the service

by rail or by lake steamers on the one hand, and by barge on the other hand, or to any other consideration except only the intent of the rails to put the barge carriers out of the business, and destroy a form of transportation in this field, contrary to the Transportation Act of 1940 and the provisions thereof above mentioned.

That neither on the present record, nor in fact, is there anything to support the assertion that has been made herein that the only effect of the proposal would be to reduce the profits of certain elevator operators; that, on the contrary, the proposal would cripple Petitioner and barge transportation of grain to the rate-break points generally (and reduce the amount of money received for their grain by farmers having access to barge transportation).

That low cost water transportation in this field, against which the proposal is aimed, is an asset to the national defense and a natural resource which Congress has spent millions to make available.

No report herein, whether of the examiner, Division 2, or of the Commission, refers in any way to the rights of Petitioner under Paragraph 4 of Section 3 as amended by the Transportation Act of 1940, although the order of the Commission expressed to be effective on December 22, 1941, would take those rights.

Petitioner did not assert his said rights under the Transportation Act of 1940 at the hearings because he did not have them: the Transportation Act of 1940 had not been enacted. Petitioner now has been held to be a common carrier by water subject to Part III of the Interstate [fol. 169] Commerce Act as amended by the Transportation Act of 1940, in a collateral proceeding under that Act. Petitioner has never had a hearing on the matters herein presented touching the legality of said rate proposal under the Transportation Act of 1940.

Therefore, Petitioner (appearing specially, forasmuch as he does not and cannot consent to be bound as to his rights under the Transportation Act of 1940 on the record herein, that was made and closed before those rights existed) prays for a hearing as hereinabove set forth, and especially prays:

1. That in event the rate proposal in question is not held by the Commission to be illegal under the subsequently enacted Transportation Act of 1940 upon the present record

(and, if need be, upon notice by the Commission of said proceedings thereunder before Division 4) that he may be permitted to intervene in this proceeding and to present evidence to the proposition that said proposal is illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940, including the evidence hereinbefore specifically mentioned.

2. That the taking effect of the order of this Commission approving said proposal, now expressed to be effective on December 22, 1941, may be stayed, until this petition, and the said petition of your Petitioner heretofore filed herein, may be heard and decided upon.

And in further support of his petition, Petitioner respectfully states:

Petitioner filed a brief in connection with his said petition heretofore filed.

The report of the Commission takes no notice of the [fol. 170] rights of Petitioner hereinabove presented, and urged also in said former petition and brief.

Therefore Petitioner, in support of this petition, respectfully refers to said petition and brief and makes the same part hereof, and for convenience of reference (all parties having been heretofore served with a copy of said former petition and brief) includes a copy of said former petition and brief in the same binding with all filed copies hereof.

Respectfully submitted, A. L. Mechling, Doing Business Under the Trade Name and Style of A. L. Mechling Barge Line, By Edward B. Hayes, His Attorney.

Address: Edward B. Hayes, Room 1016 Insurance Exchange Building, Chicago, Illinois.

—— ——, being duly sworn deposes and says that he is —— ——, of A. L. Mechling, doing business under the trade name and style of A. L. Mechling, Barge Line, Petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same are true as stated except as to matters and things, if any, stated on information and belief, and as to those matters and [fol. 171] things he believes them to be true.

Subscribed and sworn to before me this — day of December, 1941.

—— ——, Notary Public.

Certificate of Service

I hereby certify that I have this day served the foregoing petition upon all parties or record in this proceeding by mailing a copy thereof, properly addressed, to each of them.

Dated at Chicago, Illinois, this 16th day of December, 1941.

Edward B. Hayes, Counsel.

[fols. 172-173] Before the Interstate Commerce Commission

I. & S. Docket No. 4718

Grain Proportionals, Ex-Barge to Official Territory

Petition and Special Appearance of A. L. Mechling, Doing Business under the Trade Name and Style of A. L. Mechling Barge Line, for Rehearing and Reconsideration of the Report Herein

[fol. 174] The petition of A. L. Mechling, an individual doing business under the trade name and style of A. L. Mechling Barge Line, specially appearing for the purposes hereof only, under that special appearance respectfully represents and prays:

This Petitioner could not be heard when the record on the facts was made and closed herein in January, 1940, to assert his rights (and necessities) as they now exist under the subsequently enacted Transportation Act of 1940, approved September 18, 1940.

Petitioner is now a regulated common carrier of grain by barge to Chicago, Illinois, for reshipment there to interstate or foreign destinations, under authority of the Act mentioned, and in conformity with its provisions, with published rates for that service on file with this Commission.

Unless Petitioner can have his rgihts and status under that Act, his business will be crippled. He earnestly prays the Commission not to destroy him by taking those rights in this proceeding, where he has not had any opportunity [fol. 175] to present evidence in support of them: the record

on the facts in this proceeding was closed before that Act existed.

Petitioner's new right to be a regulated common carrier by water, pursuant to Part III of the Interstate Commerce Act (enacted as part of said Transportation Act of 1940 after the record closed in this proceeding), is established and concluded upon another record elsewhere made before this Commission as required by said Act. And Petitioner refers to the order of Division 4 rendered in Docket No. W-630 of the files and records of this Commission and asks the Commission to take notice thereof, and offers to produce the same in evidence in this proceeding, and prays for the opportunity to do so unless the Commission will take notice thereof as fully and with the same force and effect as though produced in evidence herein.

As to Petitioner's new right not to be discriminated against by a rail rate, a right given said Transportation Act of 1940 (Section 5 (e), approved September 18, 1940, amending the Interstate Commerce Act, Section 3 (4)) and his rights under the New National Transportation Policy enacted by said Transportation Act of 1940, Petitioner has never had any opportunity to present evidence in support thereof herein, inasmuch as the record on the evidence in this proceeding closed before those rights existed. And Petitioner avers that the rail rate proposal under investigation on this proceeding violates his rights under Section 3 (4) as so amended and the new National Transportation Policy enacted by said Transportation Act of 1940.

Petitioner further prays, therefore (as a common carrier subject to Part III of the Interstate Commerce Act as amended by the Transportation Act of 1940, by finding and determination of this Commission since the report of [fol. 176] Division 2 herein) for a rehearing giving him the opportunity to present evidence and assert his rights under said Section 3 (4) as amended and said National Transportation Policy (unless the Commission should be of opinion without any further evidence that the rate proposal under investigation cannot be sustained.)

Petitioner further shows that the pendency of this Investigation and Suspension Proceeding on a rate proposal, gave no one any notice that established rates, or practices thereunder, were on trial, and that he was not party to the record on the facts, and that there is no basis within the

scope of the issues herein for any ruling upon established rates or practices thereunder. Petitioner shows further that as to any proceeding wherein the established rates mentioned in the report of Division 2 are ruled upon, the fact that Petitioner is now a common carrier under Part III both alters the situation respecting the propriety of those rates and also gives him a new and different interest therein, upon which he has never had opportunity to present evidence, and for both those reasons he is entitled to present evidence and be heard in any such proceeding. Petitioner therefore prays that the Commission will review and set aside the report of the majority of Division 2 touching established rates, as being outside the scope and issues of this I. & S. proceeding, and upon a record insufficient under the Interstate Commerce Act as now amended by the Transportation Act of 1940; but, if the Commission is of other opinion, then that said report touching established rates may be reviewed and set aside as erroneous; and if the Commission is of opinion that neither may be done without further evidence, then that he may have the opportunity to present such evidence and be heard thereon.

Therefore Petitioner (appearing specially, forasmuch as he does not and cannot consent to be bound as to any rights [fol. 177] under the Transportation Act of 1940 on the record herein, that was made and closed before those rights existed) prays for hearing as hereinabove set forth.

And in further support of his petition, Petitioner respectfully states:

Brief and Argument

1. Rights of Petitioner under Transportation Act of 1940, Enacted Since the Hearings Herein Were Closed

The hearings on the facts in this case closed on and prior to January 26, 1940.

The Interstate Commerce Act at that time could be argued to afford no protection to a carrier, not subject to what is now Part I of the Act, as to the particular traffic claimed to be the subject of a discriminatory rate.

> Nicholson Universal S. S. Co. v. Pennsylvania R. R. Co., 203 I. C. C. 637.

In that view (which seems to have been taken by the majority of Division 2 herein) no proof that any carrier,

not subject to Part I could possibily have offered at the hearings herein could have supported a claim that the rate proposal was an illegal discrimination against him at that time. (Case cited.) *

After the hearings closed in this proceeding, Congress enacted the Transportation Act of 1940, approved Septem- [fol. 178] ber 18, 1940. This Act amended the Interstate Commerce Act in many ways. It created Part III, subjecting water carriers to regulation. It enacted a new "National Transportation Policy" which included carriers by water in the national transportation system to be fostered in the administration of the Interstate Commerce Act (preceding Section 1). In particular, Section 5, paragraph e, of this amending act of September 18, 1940, amended Paragraph 4 of Section 3 of Part 1 of the Interstate Commerce Act to read:

"'(4) All carriers subject to the provision of this part (Part I) shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the Interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III.'"

This created a new factor of vital importance: When an incoming water line was a "common carrier by water subject to Part III" discrimination against it in the rail rate for the on-haul became illegal.

That was not before the Examiner when the record on the facts closed herein. Both the majority and minority of Division 2 find that record to be incomplete on the ques-

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* Whether he was a common carrier or not would be immateria; he was not subject to regulation, and that ended it. The point of the majority report of Division 2, as stated in the headnote, was that the inbound rates are "not subject to our jurisdiction." (Sheet 1.)

tion whether the water lines were common carriers at all.* [fol. 179] After passage of the Transportation Act of 1940 the Commission established machinery for the determination of the question whether any carrier was a "common carrier subject to Part II." This Petitioner, in conformity thereto, has now been found and held to be "a common carrier subject to Part III" (see order of Division 4, quoted in Appendix hereto. This order was entered since the report of Division 2).

Division 4, to which such matters have been referred, shows a better understanding of the new Act than the western rail carriers, who state: "The Transportation Act of 1940 did not change this situation insofar as commodities in bulk are concerned."** That statement is erroneous. There is no exemption of bulk commodities in the new Act: there is sometimes an exemption of transportation of not more than three bulk commodities in one tow or vessel—when no non-exempt commodities are in the tow or vessel, and when the commodities meet the definition of bulk commodities there made. (Section 303 (a), 303 (b).) As indicated in the findings of Division 4, it is a practical impossibility (for this water carrier at least) to engage in the transportation of bulk grain on an exempt basis. He must have authority under Part III; and he does have it. (See Appendix.) These matters have been concluded and settled by this Commission in a separate proceeding, held for the purpose under the Transportation Act of 1940, subsequently enacted. When the record was made in the caption proceeding no such questions existed.

At its beginning the Transportation Act of 1940 enacts a new "National Transportation Policy" for the administration of the Interstate Commerce Act. Expressions of the prior act were held precatory as pointed out in authority cited by the majority report of Division 2; this new Na- [fol. 180] tional Transportation Policy is in mandatory language and is referred to throughout the Act. It is hardly to be assumed that this new provision was intended to accomplish nothing. It is the first provision of the Interstate

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* Sheets 8 and 46.

** Page 22 of "Reply in behalf of the western carriers to the petition for rehearing," etc.

Commerce Act; and the only one expressly applicable to all the other provisions of the Interstate Commerce Act.

It seems to us that the new provisions of the Interstate Commerce Act in Section 3 (4), above quoted, acquire special force when read in connection with these other new provisions of the Interstate Commerce Act in the New National Transportation Policy:

"'It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy'."

(Interstate Commerce Act, preceding Section 1.)

[fol. 181] II. Violations of Petitioner's Rights under Transportation Act of 1940 by the Rate Proposal in Question

The facts have been somewhat ambiguously treated in some of the documents filed in these proceedings.

The facts are:

Grain comes to Chicago, Illinois, by rail, barge and lake steamer. The volumes are great; they are not consumed locally. "Chicago is the greatest corn market in the world. * * *" (Sheet 5.)

This movement into Chicago by rail, barge and lake steamer of grain for reshipment there to interstate and foreign destinations is, as a matter of common knowledge, one of the most conspicuous "streams" of interstate and

foreign commerce. The rail service for the on-haul for all this grain is exactly the same, whether it comes to Chicago by rail, barge or steamer. The rail rate for the on-haul has been the same for many years prior to the present proposal.

This proposal is not confined to corn, nor to Illinois origins. The distinction it proposes is not between inbound rates that are filed and those that are not.

The substance of the present proposal is correctly stated by Commissioner Alldredge:

"If the suspended schedules should become effective the situation would then be that the present proportional rates would continue in effect on grain brought to Chicago by rail and by lake vessel but the higher local rates would apply on grain brought in by barge over the Illinois Waterways." (Sheet 46.)

[fol. 182] As the map shows, the inland river waterway system of the country has access to Chicago over the Illinois River and Waterway, whatever the origin. Origins may be anywhere on the inland river system. Today such origins are at least as far west as Kansas City on the Missouri River, at least as far south as St. Louis on the Mississippi, and at least as far north as Burlington, Iowa, on the Mississippi, with many intermediate origins. This grain gets to Chicago over the Illinois River and Waterway.

The Federal (and state) Governments have spent millions in the improvement of this inland waterway system for navigation—about $60,000,000.00 on the improvement of the Illinois River and Waterway alone. (Sheet 3.) River navigation for such cargo is by means of strings of barges, moved by towboats. These improvements of the waterways have made barge transportation of grain to Chicago commercially important, by eliminating navigation difficulties. The result is that farmers having access to river transportation get more for their grain*—one of the inherent advantages of water transportation is low cost. That is what the Federal Government spent this money to achieve.

The substance of the present proposal, we repeat, is simply this: to force all grain arriving ex-barge at Chicago,

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* Sheets 13, 14.

Pekin, Ill., and similar rate break points to pay a higher rail rate for the on-haul east than grain arriving at the same points ex-rail—(or ex-lake steamer).

Examples of the penalty thus imposed on shipping grain to Chicago by barge, instead of by rail, vary from over fifty-three per cent (Norfolk, Va., Export) to over thirty [fol. 183] per cent (Boston, Mass., Domestic) of the total rate for the on-haul.*

The consequences to Petitioner and other barge lines of such a penalty on the shipment of grain to Chicago by barge are evident. (And if no grain comes to Chicago by barge, no ex-barge grain will go east by rail.)

It has been hinted in argument that ex-barge grain can escape from Chicago by lake. This overlooks the blunt fact that for about five months of every year winter closes lake navigation through the Straits of Mackinac—the only outlet from Lake Michigan. The lake bulk freighters that go east are laid up, out of commission, throughout that whole season. Petitioner's barge operation to Chicago and Pekin is a year-round operation; the inland waterways to Chicago on which petitioner operates are not closed in the winter. The Government maintains service at the locks there throughout the year; traffic is rarely interrupted by ice, and then only a few days at a time.

Even in summer there are not enough bulk freighters to handle the on-movement of the quantities of eastbound grain reshipped by rail from Chicago—and also handle the other lake bulk tonnage. The U. S. Maritime Commission, to keep the steel mills in ore, is now planning a dozen new bulk freighters for that trade. To handle the volumes of grain demanding reshipment east from Chicago in the summer alone, would take bulk freighters off the ore trade, and other bulk lake trades, from which they could ill be spared [fol. 184] (and would not be spared).**

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* Cf. tabular analysis, "Petition of Inland Waterways Corporation * * * For Rehearing and Reconsideration of the Report Herein," at page 11, as to New England and Trunk Line Territory destinations.

** To take them off the ore trade would be a direct blow at national defense. The ore trade is not the only lake trade of which that is true; e. g., the scrap steel trade, the coal trade, etc. It is common knowledge that lake tonnage is strained to the utmost today.

This Petitioner now has rights (and responsibilities) under Part III of the Interstate Commerce Act that he did not have when this record was made. How can he exist on a half-year basis—crippled, even during that half of the year, by the limitations of lake tonnage capacity? Petitioner's business is that of a common carrier of grain to all points on the Illinois waterway north of and including Havana, Illinois, for reshipment there to interstate and foreign destinations. (See appendix. There is no escape at all from any but one of these points by lake at any time of year; they are not on the lake.)

The penalty that would be imposed on shipping grain to Chicago or Pekin by barge (instead of by rail) is not related to anything but the intent of the rail lines, frankly stated on the record, to put the barge carriers out of the field.

The fact that the purpose of the present proposal was to put the barge lines out of the grain trade was frankly stated by the sole witness for the respondents (R. 90). No witness denied it; it is the fact, and the record on which decision was made by Division 2.

The majority of Division 2 did not mistake that fact; they gave it as a reason for approving the proposal. They say that the low barge rates have broken down the rail rate structure, by tempting the rails to publish intra-state rates to Chicago below the national rail base. (Sheet 45). The only way in which the proposal will remove the temptation of the rails to publish low intrastate rates is to put [fol. 185] the barge carriers out of the business. That is the only way it could remove that temptation, and the way in which it was intended to work—as the witness for the western lines stated (R. 90).*

Thus the right direction for administration of the Interstate Commerce Act, when water rates are lower than competing rail rates, is held to be to put the water carriers out of business (one step at a time).

Counsel for the rail lines stated an oral argument that water transportation ought to be confined to purely local

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* The next step—one required by the doctrine of the report—is elimination of the lake steamer carriers of grain to Chicago, as has been pointed out by the eastern lines who proposed this rate in their brief filed herein asking a rehearing, pp. 6, 7.

transportation; that is the basis on which this proposal is defended. Obviously this Petitioner, who is in the business of moving grain to reshipping points for reshipment there (Cf. Appendix) cannot exist at all on a purely local basis. Neither he (nor any barge carrier) can remain in the grain trade (nor in many other trades) on a purely local basis: they are not local trades. An administrative policy that would make water transportation purely local, while it was perhaps the best face that could be put on this proposal by counsel defending it before Division 2, really means destruction of this and many other water carriers. Such a policy seems to be in the teeth of Section 3 (4) as amended by the Transportation Act of 1940:

"All carriers subject to the provisions of this part (Part I) shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their lines and connecting lines. • • • [fol. 186] As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III."

It seems impossible to say, in view of such provisions, that Congress intended water transportation to be purely local—even if Petitioner and many other water carriers could exist on a purely local basis (as they cannot).

Again:

"All carriers subject to the provisions of this part (Part I) • • • shall not discriminate in their rates, fares and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III."

Interstate Commerce Act, Sec. 3(4) as amended by the Transportation Act of 1940, Sec. 5(e).)

These proponents, carriers subject to Part I, now propose to charge over 30% to 50% more for moving grain brought to Chicago and Pekin by this Petitioner, than they charge for exactly the same service for exactly the same kinds of grain that is brought in by rail or lake steamer.

The avowed purpose is to put the Petitioner and the other barge lines out of the business—to destroy that form of transportation in this field. The view of two commissioners on Division 2 was, that this is the right direction (as for the lake steamers, they say they are not involved—yet). [fol. 187] The policy of destroying water transportation and water carriers may or may not have been the right direction prior to the Transportation Act of 1940. But since that enactment, it is hard to read Section 3 (4), especially in the light of the new "National Transportation Policy," and not condemn a policy of destroying water carriers for the benefit of rail carriers (regardless of the effect on the public).*

This statutory prohibition of discrimination in rail rates against Petitioner and other common carriers by water, is new.

It is to be read in the light of a new requirement that the administration of the Act shall be "fair and impartial" to "all modes of transportation subject to the provisions of this Act." ‡ The destruction of water carriers for the benefit of rail carriers is not "fair and impartial" to water carriers.

Again, this new specific prohibition of discrimination is not only to be so administered as to be fair to water transportation, but is to be "so administered as to recognize and preserve the inherent advantage of each" form of transportation. One of the "inherent advantages" of water transportation is its low cost. The proposal, and the report approving it, make that inherent advantage a reason for destroying water transportation. So to administer the Act as to destroy water transportation on account of its inherent advantage, is not to recognize and preserve its inherent advantage. Why did Congress invest millions in the waterways (including millions in the Illinois Water-

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* The effect on the public of a policy of destroying low-cost water transportation finds forceful illustration in the fact here. Cf. Sheet 1, bottom.

‡ (Interstate Commerce Act, National Transportation Policy, preceding Section 1, as amended by the Transportation Act of 1940.)

way) if not to secure that advantage to the public? That Congressional policy, implemented with millions of dollars [fol. 188] of cash out of the pockets of the public, is not to be forgotten when, in amending the Interstate Commerce Act, Congress directs the Commission to recognize and preserve the inherent advantages of water transportation.

Again, Congress now says the aim of administration must be to "foster sound economic conditions in transportation and among the several carriers," and "all to the end of developing coordinating and preserving a national transportation system by water, highway and rail" adequate to the needs of "commerce" and of the "national defense." (Petitioner was a water carrier in this field when Congress used that language. (Cf. Appendix.) Congress then proceeded specifically to forbid the rails to discriminate in their rates against connecting water carriers such as Petitioner is now held to have been. (Sec. 3 (4).)

The policy of this proposal is frankly stated to be to eliminate entirely a method of transportation, for the precise reason that it is the lowest cost and most economic method in the field. It might be that water, rail or highway would be the most economic form in a particular field: its destruction—for that very reason—is scarcely consonant with the intent disclosed by Congress. That is equivalent, moreover, to the destruction of a national resource, a peculiar policy for a nation at war. (In this instance Congress has spent millions to make that resource available.)

Unlike the language of Section 3 (1) dealing with preferences and advantages, Section 3 (4) dealing with discrimination between carriers makes no qualifications as to what may be "due" or "reasonable." Discrimination is made illegal. No discrimination between carriers is "due" or "reasonable," or permissible in any way under any circumstances; it is flatly forbidden.

Can it be said that a rail carrier proposing a rate that [fol. 189] subjects grain reaching the reshipping point by barge, to a penalty of 30% to 50% for the on-movement, as compared to grain reaching the same point by rail, is not discriminating in its rates between the connecting lines—in favor of the connecting rail lines, and against the connecting barge-lines? There was no intent, and there is no pretense, that the difference was fairly or actually related

in any way to any consideration but the blunt purpose stated by the witness, to put the barge carriers out of the business (R. 90).

In view of the facts, the rails have not attempted to argue that the discrimination against the barge line, here proposed can be justified under the Transportation Act of 1940. The western rail lines argue, as above quoted, that the Act does not apply—that "The Transportation Act of 1940 does not change the situation so far as commodities in bulk are concerned." That, however, is simply in the teeth of the law. (Cf. Sec. 303 (a) and (303) (b), and Appendix.) Whenever the Federal Barge Line brings a barge of grain in bulk to Chicago in the same tow with a load of sacked grain (or any commodity not in bulk) the whole tow is subject to the Act, including the bulk grain (Sec. 303 (b).) Whenever Petitioner starts a towboat north from Havana with a tow of rye, wheat and oats in bulk, and has to pick up a barge of corn in bulk at Morris, all for Chicago, the whole tow is subject to the Act. (Cf. Sec. 303 (b) and Appendix.) Petitioner cannot operate as a practical matter on an exempt basis. That is not an open question in this case. Petitioner, we submit, never had a hearing on it in this case. But it has been settled in a collateral proceeding by this Commission under the Transportation Act of 1940.

It is obvious that the service rendered in taking the grain east from Chicago is exactly the same, whether the grain comes to Chicago by barge, lake-steamer, or rail. Grain [fol. 190] comes to a common basis at Chicago, regardless of means of transit thither; no one has disputed it.

If the rails can do what they here propose, they can dictate who shall serve the public in transportation of grain to Chicago—the rails, or the water lines. They state (R. 90) that this was exactly what they meant to do by this proposal as to the marge lines. Under the law today it is discrimination against connecting water lines, now defined by the statute as common carriers subject to Part III—and is forbidden by Section 3 (4) as now amended. That prohibition did not exist when this proposal was made, nor when this record was made and closed. Neither Petitioner (nor any other water carrier) had yet been held to be a "common carrier subject to Part III" when the report of Division 2 was written.

The law that applies is the law as it is now. The new rates are not in effect now. They will never become effective until this full Commission has acted. If it should approve them, these rates would operate under the Transportation Act of 1940—under which they are illegal. In I. & S. Docket No. 4150, Cancellation of Rates and Routes via Short Lines, 245 I. C. C. 183, 187, the question was (p. 186) whether paragraphs (3) and (4) of Section 15, effective after the hearings were held there, should apply when the final decision was made. The Commission said the sections were not retrospective. It held:

"In any event the amendment is remedial and we think its application in these proceedings is proper." (Idem, 187.)

It seems plain that rate proposals become effective only after the amendment of Section 3 (4) by the Transportation Act of 1940 are governed thereby. No one has contended otherwise.

[fol. 191] III. The Report of Division 2 Should Be Re-Examined and Reversed in View of the Transportation Act of 1940 and Subsequent Proceedings Thereunder.

The report of Division 2 concerned itself with the established rates.

Even the parties did not come prepared to try any such issue. This petitioner never was a party. While counsel for the western rail lines initiated the suggestion that he should testify as a witness (R. 1061) he was never a party nor represented by counsel. Pendency of an I. & S. proceeding on a proposal, advised no one (parties or others) that established rates were on trial.* Both majority and minority reports find the record so made incomplete to warrant a finding as to whether Petitioner was a common carrier. (Sheets 8, 46.) As for any other barge lines in the trade, none were parties (excepting only the Federal Barge Line). Petitioner has now been held a common carrier subject to Part III by the Commission under the regular procedure set up by it under the subsequent Transportation

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* The minority report points out that in this respect the majority report goes wholly outside the issues. (Sheet 46)

Act of 1940 for the determination of that question. (Df. Appendix.) ‡

[fol. 192] The major premise of the attack made on existing tariffs is that the rates of the connecting barge lines were not subject to the Commission's jurisdiction. The gist of the decision is so stated in the headnote of the majority report (Sheet 1) and this is made the basis of the criticism of established rates throughout. (E. g. Sheets, 19, 28.) Today the Petitioner, not the least of the barge carriers, in a common carrier subject to Part III; his rates are subject to this Commission's jurisdiction. (For aught this record shows, every barge carrier in the trade will be held to be in the same situation under the Transportation Act of 1940. It seems apparent that the whole basis of the attack made on the established rates has been destroyed by the statute which made the rates of Petitioner subject to the Commission's jurisdiction.

The reason why the reports of Division 2, in discussing the criticism of established tariffs, found it pertinent to

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‡ There is no conflict as to what Petitioner does. He actively solicits every shipper who has grain to ship via the Illinois River; serves every origin on that river from which grain has been transported to Chicago for reshipment there to interstate and foreign destinations; has transported grain for every merchant who has used barge transportation; does not render these services on any contract looking to the future (his bill of lading being often executed after a barge has been placed for loading on request of the shipper and grain loaded therein.) (Cf. abstract in opening brief of Chicago Protestants, pp. 31 to 33. There is no conflict as to what petitioner does. See U. S. v. Brooklyn Eastern District Terminal, 249 U. S. 296, 304; 63 L. ed. 613, 616; Terminal Taxicab Co. v. Kutz, 241 U. S. 252, 254, 60 L. ed. 984, 986; Smitherman & McDonald v. Mansfield etc. Co., 6 Fed. (2d) 29, 32. The frequency with which motor carriers were mistaken as to their status under the commerce legislation of Congress (whatever their status under the laws of the respective states) is familiar to the Commission. See Patman Contract Carrier Application, 2M. C. C. 194. But whatever this record may show (it was closed before the Transportation Act of 1940 created material matters here presented) the finding of Division 4 seems conclusive, and subject to no collateral attack.

say that the record here made warrants no finding one way or the other as to the common carrier status of the barge carriers was this:

Section 6 (11) b gives this commission authority to prescribe water-rail "proportionals" when the water line is a common carrier. The majority thought the established rate could not be sustained as a voluntary water-rail "proportional" in the absence of evidence that a connecting barge line was a common carrier.* The minority report differed, pointing out that (1) the old rates were not the issue; (2) the burden being on the rails to sustain their proposal to deny proportionals to the connecting barge [fol. 193] lines, the rails could not in any event sustain that burden and justify their proposal by a defect in the record; (3) that Section 6 (11) b, enlarging the Commission's jurisdiction to require water-rail proportionals when the water line was a common carrier, could not be regarded as restricting the Commission's jurisdiction—as depriving it of power to regulate the voluntary water-rail proportionals in this case "after they were once established"—a reply to the attack that had been made by the majority, outside the issues, upon the established rates.

It is evident that discussion of Section 6 (11) b arose in connection with the attack on the established rates. We repeat, they were not in issue. The established rates, Section 6 (11) b, and Petitioner's common carrier status, were not the issue before the examiner; it would have been a pure accident if the record had warranted any finding on the common carrier status of the barge lines. The Division was unanimous that it did not.

And it would have been obviously impossible for Petitioner to assert his rights under the Transportation Act

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* Inconsistently, it concedes the Federal Barge Line to be common carrier, but dismisses it with the statement that "this line has hauled little if any grain *the* Chicago from origins on the Illinois Waterway here considered." (Sheet 10.) By referring to the petition of that line for rehearing, it will appear that the statement is only relatively correct as to the past, and ignores the future, (pp. 9, 10.) Moreover, if only Illinois origins were considered, the proposal was not considered for what it was; it is not confined to Illinois origins.

of 1940 at that hearing. That statute was not then enacted. There was no such thing then as a common carrier subject to Part III with a right that rail rates should not discriminate against his connecting line; that enactment, forbidding discrimination, had not been passed; he could not have been heard to sustain a right that did not exist. But he has now been held to be a common carrier subject to Part III under the subsequent statute which forbids discrimination against him by rail rates. The basis of the attack on the established rates was that the in-carrier is not a regulated carrier. That basis is gone.

The attack on the established rates has a peculiar aspect, in view of the approval of the proposal: the criti- [fol. 194] cisms of the established rates are also true of the proposal.

For example, the established proportional rates are criticized incidentally on the ground that they invoke a "novel broad transit theory," in that there is no "continuity of movement" and no "fictional bridge" of transit, and thus the established rates are not proportionals. (Parenthetically, this Commission has repeatedly sustained water-rail proportionals where there were no such transit characteristics as the majority of Division 2 thought to be necessary; the view taken upsets unbroken practice of many years, repeatedly sustained, as to rates of the character of those mentioned in Section 6 (11) b and there referred to as "proportional rates."* The novelty is therefore in in the view taken by the majority of Division 2 as to what transit is necessary—and in the attack on established rates in an I. & S. proceeding.)

The ' fictional bridge" hitherto required by this Commission in the case of grain (and all fungible goods) has been the equating of grain received and grain reshipped. It is the same fiction applied in the law of sales of fungible goods and bailments of fungible goods. The law never has required the same kernels of grain or the same drops of oil; if it did, grain could never safely — put in any elevator or oil into a tank. If that invokes fiction, it has been

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* Cf. Lumber from San Francisco Bay Point, 78 I. C. C. 760, 767, and many other cases cited in the "Petition for Reconsideration," etc., by the Chicago Protestants, pp. 18, 19.

found necessary in every branch of the law in order to make it possible to deal with fungible goods commercially. To reject it in the field of transportation would be to cripple commercial activity in transportation law in a way that is wholly inconsistent with every other branch of the law. [fol. 195] There is no finding and no evidence whatever that the equation of grain received and grain reshipped cannot be as scrupulously maintained in the case of ex-barge grain as in the case of ex-rail grain, or ex-lake steamer grain. If established rates are going to be attacked on any contrary assertion, petitioner wants to be heard and present evidence. But, we repeat, the established tariff contemplated the same equation of grain received and re-shipped in the case of ex-barge grain as in the case of ex-rail or ex-lake steamer grain. The policing agency is the same. If there had been carelessness in complying with the established tariff that would not invalidate the tariff; no evidence of carelessness goes to the point that the equation cannot be as readily maintained in the case of ex-barge grain as any other grain.*

But the aspect of the report which seems peculiar is that the continuity of transit is just the same, no more and no less, in the case of ex-rail grain, ex-lake steamer grain and ex-barge grain—and the report which finds it insufficient as to ex-barge grain, finds it sufficient as to ex-rail and ex-lake steamer grain—sustaining the proposal to allow proportionals to the latter two, while denying it to the former. If the ability to maintain an equation of grain received and grain reshipped is enough continuity of movement to warrant the proptrional rates for ex-rail and ex-lake steamer grain, then why is it not enough for ex-barge grain? (And why is it enough when the in-bound rate is

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* That there had been a failure to state the kind of grain in one document in one instance (over the long period when these proportionals were given equally to rail, lake and barge grain) by another carrier (Sheet 31) would be a strange reason for invalidating the whole established tariff, in an I. & S. proceeding, incidentally crippling the Petitioner. Why ruin the Petitioner—when the Federal Barge Line is to enjoy proportionals because its rates are on file and "subject to our jurisdiction"? (Sheet 1.) Petitioner's rates are now on file and subject to the Commission's jurisdiction.

on file but not enough when the in-bound rate is not filed?) [fol. 196] Again, the report condemns the established proportionals for ex-barge grain, on the ground that the in-bound rate was not subject to the Commission's jurisdiction, but sustains the proposal, which is to allow proportionals to ex-lake steamer grain on which the in-bound rate was not subject to the Commission's jurisdiction. If the fact that an in-bound or on-bound water rate is not subject to the Commission's jurisdiction is now to make a voluntary water-rail or rail-water proportional illegal,* then how does the division sustain the proposal—which is to allow proportionals to ex-lake grain, on which the in-bound rate is not subject to the Commission's jurisdiction? The proposal, which was sustained, had exactly the same characteristic as the old rate, which was condemned therefor. And only the proposal was in issue.

We submit that the attempt to sustain this discrimination against barge carriers involves impossible contradictions, as well as an impossible result under the Transportation Act of 1940. Today, the in-bound rate is subject to the Commission's jurisdiction, destroying the whole basis of the attack on the established rate. And petitioner has been held a common carrier subject to Part III, subsequently enacted, by a statute which also forbade discrimination in rail rates against connecting lines who are common carriers subject to Part III (Sec. 3 (4) as amended). This enactment furnished new and conclusive objection to the proposal. The established rate is not subject to that objection. And it is not in issue.

[fol. 197] **IV. To Take Petitioner's Rights Under the Subsequently Enacted Transportation Act of 1940 on the Present Record Which Was Closed Before These Rights Existed Would Be to Take His Rights Without Hearing.**

Petitioner's rights to complain of discrimination against him did not exist when the hearings were held; they exist by virtue of the subsequent enactment of the Transportation Act of 1940 (especially Section 5 (e) thereof amending Section 3 (4)). The decision that petitioner is a common carrier subject to Part III, to whom that amendment applies, came even later.

* Contrary to a good many decisions that have been cited by the Chicago protestants. (Cf. their "Petition for Reconsideration," etc., pp. 18, 19.)

Petitioner could not be heard at the hearings to assert rights under a statute that had not been passed. He has never had a hearing in which he could assert those rights. The right to be heard includes the right to know the issue and to present evidence. The question of petitioner's right to be a common carrier under Part III did not then exist; it has since been decided and concluded. (See appendix.) But the issue of whether this proposal is a discrimination under Section 3 (4) did not exist either, when the hearings were held herein; and that has never been tried.

It would appear to petitioner that the present record requires the reversal of the conclusions of the majority of Division 2, both as to its attack on established tariffs and as to its approval of the rail rate proposal that is in question. (Cf. minority report of Commissioner Alldredge.)

But if the Commission is of other opinion, then petitioner submits that the decision of Division 4 (in the Appendix, should be noticed by the Commission, without the necessity of further hearings, and that this requires reversal of the majority of Division 2 upon grounds heretofore stated. If that decision cannot be noticed, or if the Commission considers that without still further factual information and evidence beyond that which is settled by the [fol. 198] order of Division 4, it cannot or should not reverse the report of the majority of Division 2, then petitioner desires to present evidence to the proposition that the rate proposal in question is illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940, and in any such event he offers to produce evidence.

Petitioner submits that in thus asking for a hearing before any order is entered by the Commission that would be ruinous to him, he is only asking for the fair play that the law contemplates and that this Commission shows to all, and that is, indeed, enjoined upon all agencies of Federal power by the due process requirements of the Fifth Amendment to the Federal Constitution.

Respectfully submitted, Edward B. Hayes, Attorney for A. L. Mechling, Doing Business Under the Trade Name and Style of A. L. Mechling Barge Line.

Edward B. Hayes, 1016-175 W. Jackson Boulevard, Chicago, Illinois.

[fol. 199] APPENDIX I TO PETITION

Interstate Commerce Commission

No. W-630

A. L. Mechling Barge Line Common Carrier Application

Submitted October 1, 1941. Decided November 6, 1941

Applicant found entitled to continue operation as a common carrier by non-self-propelled carrying vessel in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana, Ill., by reason of having been engaged in such operation on January 1, 1940, and continuously since. Certificate of public convenience and necessity issued.

Edward B. Hayes for applicant.

Report of the Commission

Division 4, Commissioners Porter, Mahaffie and Miller.
By Division 4:

By application filed May 29, 1941, A. L. Mechling, an individual doing business under the trade name and style of A. L. Mechling Barge Line, of Joliet, Ill., seeks a certificate of public convenience and necessity under section 309 (a) of the Interstate Commerce Act authorizing continuance of operation as a common carrier by water, in interstate or foreign commerce, in the transportation of grain and soy [fol. 200] beans between all points on the Illinois Waterway[1] and on the Mississippi River between Burlington, Iowa, and New Madrid, Mo., inclusive. No objection to the application has been offered.

The application for the authority sought is based in part upon the so-called "grandfather" clause of section 309 (a), which provides for the issuance of a certificate

[1] The Illinois Waterway consists of the Illinois River, the Des Plaines River from the Illinois River to the Sanitary and Ship Canal, the Sanitary and Ship Canal, the Chicago River and its branches, the Calumet-Sag Channel, Little Calumet River, and Calumet River.

upon proof of bona fide operation on January 1, 1940, and continuously since. Such operation has been conducted between points on the Illinois Waterways north of and including Havana, Ill. The evidence submitted with the application establishes these rights, and a certificate will be issued authorizing the continuance of those operations. In addition applicant seeks authority to continue so-called "interim" operations south and west of Havana, which were begun between January 1, 1940, and February 1, 1941. To secure a certificate authorizing continuance of these latter operations, applicant must prove that they are or will be required by the present and future public convenience and necessity. The present record is insufficient to support this claim, and we will set this part of the application for hearing.

Applicant has been in operation since 1930. He owns and operates 7 towboats and 17 barges, and has under charter 4 other barges. He has transported soy beans and 7 kinds of grain in bulk during 1939, 1940, and 1941 from Havana, Pekin, Peoria, Chillicothe, Lacon, Henry, Hennepin, LaSalle, Ottawa, Seneca, Paytonville, and Morris Ill., to Chicago. Shipments were also shown to Pekin in 1939. After reaching destination the commodities generally [fol. 201] continue movement by rail or water carriers to points in other States or to foreign countries. On or before January 1, 1940, applicant served every grain shipper from every grain shipping point along this section of the Waterway. He has held himself out to serve all points along the Waterway and since the latter date has served points, other than those named, when the traffic became available. In view of these facts we conclude that applicant is a common carrier of Grain and soy beans, and that he should be authorized to operate between all points on the Waterway north of and including Havana.

Applicant furnishes transportation by barge and we will limit his service to that type of operation. Classification of carriers in terms of their type of operation assures the public that the same type of service will be continued by them. In this manner the competitive balance of types of carriers over the same route will not be disrupted by changes which they might make without first securing from this Commission the necessary certificate of public convenience and necessity. We will, therefore, as a general

policy employ such a classification in defining the operating rights of water carriers subject to part III of the act.

Although applicant has been transporting commodities in bulk, he does not claim exemption under section 303 (b) of the act, because practical operation requires transportation of more than three commodities in part of the tows.

We find that applicant was in bona fide operation on January 1, 1940, as a common carrier by non-self-propelled carrying vessels in interstate or foreign commerce, in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana; that such operation has been continued since that date; and that a certificate of public convenience and necessity [fol. 202] should be issued authorizing continuation of such operation, subject to general conditions which are necessary to carry out, with respect to continuation of applicant's operations, the requirements of part III of the act, and the orders, rules, and regulations of the Commission thereunder.

An appropriate certificate will be issued.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party of record.

Dated at Chicago, Illinois, this 12th day of December, 1941.

Edward B. Hayes, Counsel.

[fols. 203-204] APPENDIX TO COMPLAINT

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

I. & S. No. 4718

Grain Proportionals Ex-Barge to Official Territory

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petitions

of A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, for leave to intervene and for rehearing and reconsideration, and of Finnegan Warehouse Company for reconsideration:

It is ordered, That the said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 205] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO PETITION OF THE SECRETARY OF AGRICULTURE FOR LEAVE TO INTERVENE AND TO FILE COMPLAINT—Filed February 12, 1942

Now comes the Interstate Commerce Commission, by its counsel, and in answer to the petition of the Secretary of Agriculture of the United States for leave to intervene as plaintiff herein in order to assert the grounds of complaint set forth in the proposed complaint attached to said petition, and respectfully shows:

1. The Interstate Commerce Commission interposes no objection to the petition of the Secretary of Agriculture for leave to intervene in this action.

[fols. 206-207] 2. In answer to paragraph 1 of the annexed complaint wherein the Secretary of Agriculture adopts by reference the complaint of the original plaintiff, Inland Waterways Corporation, with the exception of the first of the two paragraphs numbered 21 thereof, the Commission respectfully refers the Court to the answer filed by it to the complaint of Inland Waterways Corporation, plaintiff.

3. The Commision admits the averments of paragraph 2 of the annexed complaint.

4. In answer to paragraphs 3, 4, 5 and 6 of the annexed complaint, the Commission denies the materiality of each

and all of the averments therein to any issue before this Court and further suggests that the matters therein set forth are argumentative and to the extent that the same were material to any issue before the Commission were considered by the Commission in the making and entering of its report and order involved in this action.

5. The averments contained in paragraph 7 of the annexed complaint are denied.

Wherefore, The Interstate Commerce Commission prays that the intervening complaint of the Secretary of Agriculture be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 208] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Answer of the Interstate Commerce Commission to Petition of A. L. Mechling, Doing Business as A. L. Mechling Barge Line, for Leave to Intervene as Party Plaintiff and to Assert Grounds of Complaint—Filed February 12, 1942

Now comes the Interstate Commerce Commission, by its counsel, and in answer to the petition of A. L. Mechling, doing business as A. L. Mechling Barge Line, for leave to intervene as party plaintiff and to assert grounds of complaint as set forth in proposed complaint annexed to said petition, respectfully shows:

1. The Interstate Commerce Commission interposes no objection to petition of A. L. Mechling, doing business as A. L. Mechling Barge Line, for leave to intervene herein.

[fol. 209] 2. In answer to paragraph 1 of the annexed complaint wherein A. L. Mechling, doing business as A. L. Mechling Barge Line, adopts by reference the complaint

of the original plaintiff, Inland Waterways Corporation, the Commission respectfully refers the Court to the answer filed by it to the complaint of Inland Waterways Corporation, plaintiff.

3. The Commission admits the averments of paragraphs 2, 3, 4 and 5 of the annexed complaint.

4. The Commission denies the averments contained in paragraph 6 of the annexed complaint.

5. In answer to paragraph 7 of the annexed complaint the Commission admits that the Interstate Commerce Act was amended effective September 18, 1940, by the Transportation Act of 1940 to which reference is hereby made as to the nature and effect of said amendments; that the Commission on November 6, 1941, by order, held that A. L. Mechling, doing business as A. L. Mechling Barge Line, was a common carrier by water subject to Part III of the Interstate Commerce Act and issued a certificate of convenience and necessity under Section 309 (a) thereof. In all other respects the averments of paragraph 7 of the annexed complaint are denied.

6. In answer to the averments of paragraph 8 of the annexed complaint the Commission denies that A. L. Mechling, doing business as A. L. Mechling Barge Line, was denied opportunity to be heard with respect to the matters and things herein alleged, but on the contrary avers that A. L. Mechling, doing business as A. L. Mechling Barge Line, was present at the hearings before the Commission in these proceedings and had full opportunity to present any and all matters affecting his rights therein, but that the said A. L. Mechling did not see fit to become a party to said [fols. 210-212] proceedings although he did appear as a witness therein, and further that the said A. L. Mechling, following the report of Division 2 in said proceedings, filed a petition for leave to intervene asserting rights which he claimed to have been created by virtue of the Transportation Act of 1940; that the Commission gave full consideration to the effect of the Transportation Act of 1940 in its decision in these proceedings as will appear from its report and order of December 1, 1941, and made particular reference to the position of Inland Waterways Corporation, the original plaintiff herein, which was in substance the

same as that of the said A. L. Mechling; that thereafter the Commission received and fully considered the petition of said A. L. Mechling for reconsideration which said petition it denied by order of January 21, 1942.

7. The Commission denies the averments of paragraphs 9 and 10 of the annexed complaint.

Wherefore, The Interstate Commerce Commission prays that the intervening complaint of A. L. Mechling, doing business as A. L. Mechling Barge Line, be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 213] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Petition of Intervention and Answer—Filed February 6, 1942

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Now come The Alton Railroad Company, a corporation under the laws of the State of Illinois, The Atchison, Topeka and Santa Fe Railway Company, a corporation under the laws of the State of Kansas, Chicago, Burlington & Quincy Railroad Company, a corporation under the laws of the State of Illinois, Charles M. Thomson, Trustee of Chicago & North Western Railway Company by virtue of an order entered by this Court in a proceeding pending therein, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by virtue of an order entered by this Court in a proceeding pending therein, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company by virtue of an order entered by this Court

in a proceeding pending therein, and Illinois Central Railroad Company, a corporation under the laws of the State [fol. 214] of Illinois, hereinafter referred to collectively as interveners, and move the Court for leave to intervene in the above-entitled cause, and to become parties thereto in order to protect their rights.

Each of the railroad corporations, parties to this petition, and each of the petitioning trustees at all times since the respective dates of their appointments as such, were and now are common carriers for hire engaged in the transportation of persons and property by rail in state, interstate and foreign commerce, and were and now are engaged in the operation of a line or lines of railroad within the State of Illinois, among other States, and in particular between Chicago, Illinois, and western points, including other points in Illinois. Interveners are parties in interest to the proceeding before the Interstate Commerce Commission in which the order herein complained of was made and were parties to and participated in said proceeding. They desire to intervene in this cause in behalf of the defendants, to answer the amended complaint herein, and to participate in the trial of said amended complaint as parties defendants.

The joint and several answers of interveners to plaintiff's amended complaint is as follows:

I

Interveners, in answer to Paragraph 1 in the complaint, deny the allegations of the last sentence therein.

II

Interveners admit the allegations of Paragraphs 2, 11, 12, 13, 15, 16, 17, 18 and 19 in the complaint.

III

Interveners, in answer to Paragraphs 3, 5, 6, 7, 8 and 9 in the complaint, admit that the said defendants are corpora- [fol. 215] tions as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

IV

Interveners, in answer to Paragraph 10 in the complaint, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein, except interveners admit that plaintiff conducts interstate transportation on a port-to-port basis without any common arrangement with rail carriers beyond Chicago for through transportation.

V

Interveners, in answer to Paragraph 14 in the complaint admit that the Interstate Commerce Act was amended by the Transportation Act of 1940 as alleged therein, and further aver that plaintiff has failed to call the Court's attention to other amendments to the Interstate Commerce Act by the Transportation Act of 1940, among which are the amendments now appearing as Section 3, paragraph (1) and Section 303, paragraphs (b) and (c).

VI

Interveners, in answer to Paragraph 20 in the complaint, admit the allegations of the first two sentences therein; and deny the allegations of the last sentence therein.

VII

Interveners, in answer to the first of the two paragraphs in the complaint numbered 21, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the second sentence therein; and deny all remaining allegations therein.

[fol. 216] VIII

Interveners, in answer to the second of the two paragraphs in the complaint numbered 21, deny each and every allegation therein.

IX

Interveners deny each and every allegation of the amended complaint not herein specifically admitted or otherwise specifically answered.

X

Further answering, interveners say:

1. That the assailed order of the Interstate Commerce Commission is not the character of order which this Court is authorized to enjoin or set aside, and this Court lacks jurisdiction to enjoin or set aside said order.

2. That this Court has no jurisdiction to enjoin the carriers made defendants herein by the plaintiff, or any one of said carriers, from making effective or enforcing any change or changes in their schedules of rates and charges for the transportation of persons or property by rail in interstate commerce.

3. That plaintiff does not have the interest or standing requisite to enable it to bring and maintain this suit.

4. That the amended complaint fails to state any cause of action or valid claim against the parties made defendants by plaintiff, or any of said defendants upon which the relief prayed for can be granted by this Court.

5. That in the proceeding before the Interstate Commerce Commission in which the order herein assailed was entered plaintiff was accorded the full hearing provided for in and by the Interstate Commerce Act; that at the hearing or hearings on the issues before the Interstate Commerce Commission a large volume of testimony and other evidence was submitted by plaintiff and others to the Interstate Commerce Commission for consideration; [fol. 217] that in briefs filed in said proceeding and in oral argument questions relating to said issues were fully argued in behalf of the parties by their respective counsel and were submitted to the Interstate Commerce Commission for determination; that the Interstate Commerce Commission determined the questions relating to said issues and entered its order here sought to be enjoined or set aside; that the evidence before the Interstate Commerce Commission supports the said order; and that in entering the said order the Interstate Commerce Commission exercised the jurisdiction and power conferred upon it by the Interstate Commerce Act in a just and lawful manner.

WHEREFORE, having fully answered, interveners pray that the relief sought by the amended complaint be denied and that the amended complaint be dismissed.

The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, by A. B. Enoch, Their Attorney.

Address: Room 1925 La Salle Street Station, Chicago, Illinois.

[fols. 218-222] STATE OF ILLINOIS,
County of Cook, ss:

A. B. ENOCH, being first duly sworn, deposes and says that he is the attorney representing the parties designated as interveners in the above-entitled cause and makes this affidavit in their behalf; that he has read the foregoing petition of intervention and knows the contents thereof; that the same is true to the best of his knowledge and belief.

A. B. Enoch.

Subscribed and sworn to before me this 23rd day of January, A. D. 1942. —— ——, Notary Public.

[fols. 223-224] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

ORDER—January 16, 1942

This cause was heard on defendants' motion for an order dropping Robert E. Woodruff and John A. Hadden, Trus-

tees, as parties defendant and directing plaintiff to summon Erie Railroad Company as an additional defendant herein, the affected parties having stipulated thereto, and the court being fully advised in the premises.

It is Ordered that Robert E. Woodruff and John A. Hadden, Trustees, be dropped as parties defendant and that plaintiff be and it is hereby directed to summon Erie Railroad Company as an additional defendant in this action and to serve an amended complaint, and that the answers heretofore filed may stand as answers to the amended complaint.

Charles E. Woodward, U. S. District Judge.

Dated: January 16, 1942.

[fols. 225-226] In District Court of the United States

No. 3725, No. 3714: Consolidated

Order—February 6, 1942

On motion of solicitors for A. L. Mechling, Doing Business as A. L. Mechling Barge Line, it is

Ordered that leave be and the same is hereby given it to Intervene in the above entitled cause.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARGILL, INCORPORATED, et al.,
Plaintiffs.

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Civil Action
File No. 3714

COMPLAINT
(EQUITABLE RELIEF SOUGHT)

WALTER, BURCHMORE & BELNAP,
Attorneys for Plaintiffs.

NUEL D. BELNAP,
Of Counsel.

2106 Field Building,
Chicago, Illinois.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

CARGILL, INCORPORATED,
NORRIS GRAIN COMPANY,
ROSENBAUM BROTHERS,
SANTA FE ELEVATOR CORPORATION,
CONTINENTAL GRAIN COMPANY,
Plaintiffs.

vs.

UNITED STATES OF AMERICA,
THE BALTIMORE AND OHIO RAILROAD COMPANY,
ROBERT E. WOODRUFF and JOHN A. HADDEN, Trustees of the Erie Railroad and of the Chicago & Erie Railroad Company,
THE NEW YORK CENTRAL RAILROAD COMPANY,
THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY,
THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Defendants.

Civil Action

File No. .....

COMPLAINT

1. The plaintiffs, Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, bring this complaint against the United States of America for the purpose of suspending, enjoining, setting aside, and annulling a certain order, more particularly hereinafter described, issued by the Interstate Commerce Commis-

sion (hereinafter referred to as the Commission) on December 1, 1941, in a proceeding before the Commission known as *Investigation & Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory*, said order being reproduced as Appendix C, on pages 17 to 47 hereof, and bring this complaint against defendants other than the United States of America (said defendants being hereinafter referred to collectively as carrier defendants) for the purpose of enjoining and prohibiting said carrier defendants from publishing and filing with the Commission tariffs or schedules of rates and charges found by the Commission in said order to be just and reasonable and not shown to be otherwise unlawful, and permitted by said order to be published and made effective, and from making effective and enforcing said rates and charges. This action arises, the United States is made a defendant herein, and the jurisdiction of this Court is conferred by U. S. C. Title 28, Sections 41 (28), 43, 44, 45, 45(a), 46, 47, and 48, as hereinafter more fully appears.

2. Plaintiff, Cargill, Inc., is a corporation organized and existing under the laws of the state of Delaware, with its principal office and place of business at Chicago, Illinois.

3. Plaintiff, Norris Grain Company, is a corporation organized and existing under the laws of the state of Illinois, with its principal office and place of business at Chicago, Illinois.

4. Plaintiff, Rosenbaum Brothers, is a corporation organized and existing under the laws of the state of Illinois, with its principal office and place of business at Chicago, Illinois.

5. Plaintiff, Santa Fe Elevator Corporation, is a

corporation organized and existing under the laws of the state of Illinois, with its principal office and place of business at Chicago, Illinois.

6. Plaintiff, Continental Grain Company, is a corporation organized and existing under the laws of the state of Delaware, with its principal office and place of business at Chicago, Illinois.

7. All of the plaintiffs are engaged at Chicago, Illinois, in the operation of public elevator facilities and in the merchandising of grain. In the course of that business, the plaintiffs purchase grain at Chicago which has arrived at that point via barge via the Illinois Waterways. (Said grain being hereinafter referred to as ex-barge grain.) The ex-barge grain so purchased is temporarily stored at Chicago in public elevators and subsequently is sold and reshipped by plaintiffs to purchasers located throughout the states of Indiana, Michigan, Ohio, Pennsylvania, New York, New Jersey, Delaware, Maryland, Virginia, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

8. Defendant, The Baltimore and Ohio Railroad Company, is a corporation chartered by the states of Maryland and Virginia; its principal office and place of business is at Baltimore in the state of Maryland; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Missouri, Illinois, Indiana, Kentucky, Ohio, West Virginia, Virginia, Pennsylvania, New York, Maryland, Delaware, New Jersey, and other states in the United States.

9. Defendants Robert E. Woodruff and John A. Hadden are trustees, duly appointed under the laws of the

United States, of the properties of the Erie Railroad and Chicago & Erie Railroad Company; their general offices and places of business are at Cleveland in the state of Ohio and at New York City in the state of New York; and they operate lines of railroad for the carriage of freight throughout the states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, and other states in the United States.

10. Defendant, The New York Central Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Ohio, Illinois, and Pennsylvania; its principal office and place of business is at Albany in the state of New York; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of New York, Massachusetts, Pennsylvania, Ohio, Indiana, Illinois, Michigan, West Virginia, Kentucky, Missouri, New Jersey, and other states in the United States, and Canada.

11. Defendant, The New York, Chicago and St. Louis Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Pennsylvania, Ohio, Indiana, and Illinois; its principal office and place of business is at Cleveland in the state of Ohio; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of Indiana, Illinois, Ohio, New York, Pennsylvania, Missouri, Michigan, and other states in the United States.

12. Defendant, The Pennsylvania Railroad Company, is a corporation incorporated under the laws of the state of Pennsylvania; its principal office and place of

business is at Philadelphia in the state of Pennsylvania; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Missouri, and other states in the United States, and Canada.

13. Defendant, The Chesapeake and Ohio Railway Company, is a corporation incorporated under the laws of the state of Virginia; its principal office and place of business is at Richmond in the state of Virginia; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Illinois, Indiana, Ohio, Kentucky, West Virginia, Virginia, and other states in the United States.

14. Defendants above named (other than the United States) are common carriers, or trustees, or receivers, of common carriers, and are engaged in the transportation of property by rail in interstate commerce between various points on their lines and also between points on their lines and points on lines of railroad connecting therewith; and more particularly, as to grain arriving at Chicago via rail, via lake, and via barge from origins to the west, northwest, and southwest thereof, (grain so arriving being hereinafter referred to as ex-rail, ex-lake, and ex-barge, respectively) and temporarily stored at Chicago before reshipment therefrom, are engaged in the transportation of such grain upon the reshipment thereof from Chicago to destinations throughout the various states of the United States located to the east of Chicago.

15. For many years the carrier defendants have maintained in tariffs, lawfully published and filed with the Commission, the same separately stated proportional or reshippinng rates from Chicago, Illinois, to destinations located throughout the various states to the east thereof on ex-barge grain as on ex-lake or ex-rail grain, all of said proportional and reshipping rates being lower than the corresponding rates published for application to local grain shipped from Chicago and Chicago rate points. By tariffs filed to become effective October 15, 1939, (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. No. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3372), the defendant carriers proposed (a) to restrict the application of the said reshipping and proportional rates so as to make them not applicable to ex-barge grain when reshipped from Chicago; and (b) to subject said ex-barge grain to the higher basis of the local rates from Chicago. Representative examples of tariff rules which then and now provide for the application of the proportional or reshipping rates to ex-rail, ex-barge, and ex-lake traffic, and representative examples of the tariff rules containing the proposed restriction are contained in Appendices II and III to the report of Division 2 in *Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory*, reported in 246 I. C. C. 353, and reproduced as Appendix B hereto. The plaintiffs filed with the Commission their written protest of September 1, 1939, and their supplemental written protest of October 3, 1939, against such schedules, alleging that, if made effective, the resultant increased rates pro-

vided for application to ex-barge grain would be unjust and unreasonable under Section 1 of the Interstate Commerce Act, unjust and discriminatory in violation of Section 2 of the Interstate Commerce Act, and unduly prejudicial and preferential in violation of Section 3(1) of the Interstate Commerce Act (U. S. C., Title 49, Sections 1, 2 and 3(1)), and praying that the Commission institute an investigation and suspension proceeding under the authority conferred upon it by paragraph (7) of Section 15 of the Interstate Commerce Act (U. S. C., Title 49, Section 15(7)).

16. Thereupon, the Commission, by order of October 14, 1939, reproduced herein as Appendix A, suspended the operation of said proposed change in rates and instituted an investigation into the lawfulness thereof in *Investigation & Suspension Docket No. 4718*, above mentioned, and the carrier defendants, by appropriate supplements to their tariffs, deferred the effective date of the above described proposed change in rates on ex-barge traffic, and said change in rates and charges has not yet been made effective.

17. Subsequent to the entry of the order shown in Appendix A, hearings were duly had in the proceeding instituted by that order, the parties were heard on brief and in oral argument, and on July 31, 1941, Division 2 of the Interstate Commerce Commission entered its report and order in said proceeding, said report and order being reproduced as Appendix B hereto. In that report and order the said Division 2 found that the tariff schedules under suspension had not been shown to be unlawful. Accordingly, Division 2 vacated and set aside the suspension order and discontinued the proceeding as of August 30, 1941.

18. On August 22, 1941, the Commission modified its

order of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941.

19. Thereafter, the plaintiffs herein, under date of August 25, 1941, filed with the Commission their petition for reconsideration and reargument, urging that under the facts and the law Division 2 should have found the proposal to be unlawful and in violation of Sections 1, 2, and 3 (1) of the Interstate Commerce Act, and asking that the report and order of Division 2 be modified accordingly and that the Commission order a permanent cancellation of the suspended tariff provisions.

20. On September 30, 1941, the Commission further modified its order of July 31, 1941, as modified by its order of August 22, 1941, so as to postpone the effective date thereof until the further order of the Commission.

21. On December 1, 1941, the Commission issued its report and order on reconsideration in said proceeding, said report and order being reproduced as Appendix C hereto. In its said report the Commission found that the proposed schedules had been shown to be just and reasonable and had not been shown to be otherwise unlawful and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding.

22. If said order is permitted to become effective, and the defendant carriers make the change in rates and charges authorized thereby, the plaintiffs will be wholly unable to ship ex-barge grain via rail from Chicago to eastern destinations, since the difference between the rates then provided on a reshipment of ex-barge grain, on the one hand, and those provided on a reshipment of ex-rail or ex-lake grain, on the other, would constitute

a complete bar to the movement. Many hundreds of thousands of bushels of ex-barge grain are now being stored by plaintiffs at Chicago with a view to resale and reshipment to the east in the immediate future. That ex-barge grain was purchased on a basis, when delivered into Chicago elevators, whereby the plaintiffs paid for it the same as the prevailing prices on ex-barge or ex-lake grain of the same species and grade delivered at Chicago. The present value of that ex-barge grain at Chicago is precisely the same as the present value of a corresponding quantity of ex-lake or ex-rail grain of the same species and grade. No purchaser to whom plaintiffs might sell is willing to pay even a fraction of a cent more per bushel for ex-barge than for ex-rail or ex-lake grain. Under the tariffs found lawful by the Commission, the rate on ex-barge grain from Chicago to New York, as a representative destination, will be 8.5 cents per hundred pounds higher than the rate from Chicago to New York on ex-rail or ex-lake grain. The merchandising profit which plaintiffs are able to secure in the buying and selling of ex-barge, ex-rail, and ex-lake grain is substantially the same and does not exceed a fraction of a cent per hundred pounds. If the plaintiffs were to ship ex-barge grain on the basis of the rates proposed, they would suffer tremendous losses through being forced to absorb the 8.5 cent difference in freight rates above mentioned out of the prices received, and such losses would be direct and absolute losses and would not constitute a mere shrinkage of profits. Consequently, the ex-barge grain above referred to must remain in the elevators of the plaintiffs until the opening of navigation on the Great Lakes, some months hence, at which time it will be permitted to escape into the consuming territory via lake steamer, since lake steamers make no distinction in freight rates as between

ex-barge, ex-rail, and ex-lake grain. This will result in tying up the storage facilities of plaintiffs to the extent of the quantity of ex-barge grain now on hand, and will prevent plaintiffs from using such storage facilities in merchandising other grain. The profit in the merchandising of grain comes in the turnover and unless plaintiffs are in a position to turn over their stocks of grains with normal frequency, they are prevented from making the merchandising profits which they would otherwise obtain.

The foregoing circumstances relate to the immediate present and will continue until navigation opens on the Great Lakes which will be about the middle of April, 1942. Looking forward to that time, ex-barge grain would continue to be barred from rail reshipment from Chicago and would be restricted to reshipment via lake. In that situation, the plaintiffs would find it impossible to sell ex-barge grain for reshipment from Chicago to destinations which can be served only by all-rail routes, such as interior destinations in Michigan, Indiana, and Ohio. As a result, plaintiffs would be forced to confine their purchases of ex-barge grain to the quantities which they might anticipate selling to destinations which can be reached via lake or lake-and-rail routes from Chicago. This would compel a material reduction in the volume of business done by plaintiffs at Chicago and, in addition, would circumscribe and restrict their ordinary merchandising activities. In the event the tariffs found lawful by the Commission are permitted to become effective, the plaintiffs, by reason of the circumstances above described, will be subjected to irreparable damage and injury.

23. The report and order of the Commission of December 1, 1941, is unlawful and void and beyond the

power of the Commission to make for the following reasons:

(a) Said report and order are not supported by essential findings of fact;

(b) Certain findings of fact contained in said report on which the Commission predicated its final conclusion are without support in the evidence, and, in fact, are directly contrary to the evidence, particularly the finding in the report reading:

> "The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators."

(c) In entering said report and order, the Commission acted arbitrarily in that it declined to exercise the function and jurisdiction conferred on it by paragraph (7) of Section 15 and paragraph (11)(b) of Section 6 of the Interstate Commerce Act, (U. S. C., Title 49, Sections 15(7) and 6(11)(b) and concluded that the proceeding before it was not a proper one in which to prescribe proportional rates on the ex-barge traffic lower than local rates.

(d) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory powers in giving effect to the measure of the inbound rate or charge and the relative length and nature of the inbound transportation service in its determination of the lawfulness under Section 2 of the Interstate Commerce Act (U. S. C., Title 49, Section 2), of the proposal to assess on ex-barge grain a higher rate than is contemporaneously provided by a separately stated proportional or reshipping rate on ex-rail or ex-barge grain for precisely the same transportation service, be-

tween the same points, and via the same line of railroad.

(e) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory authority in giving effect to the measure of the inbound rate and the relative length and nature of the inbound transportation service in its determination of the lawfulness under paragraph (1) of Section 3 of the Interstate Commerce Act (U. S. C., Title 49, Section 3(1)) of the proposal to make proportional and reshipping rates from Chicago to the east higher on ex-barge grain than on ex-rail or ex-lake grain.

WHEREFORE, plaintiffs pray:—

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining, and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order;

(c) That plaintiffs have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

WALTER, BURCHMORE & BELNAP,
Attorneys for Plaintiffs.

NUEL D. BELNAP,
2106 Field Building,
Chicago, Illinois.

APPENDIX A.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 14th day of October, A. D. 1939

INVESTIGATION AND SUSPENSION DOCKET No. 4718

GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

It appearing, That there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint regulations and practices affecting rates and charges to become effective on the 15th day of October, 1939, and later, designated as follows:

Chicago and North Western Railway Company
(Charles M. Thomson, Trustee):
Supplements Nos. 7 and 9 to I. C. C. No. 10610;

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):
Supplements Nos. 8 and 10 to I. C. C. No. B-6931;
Supplements Nos. 8 and 10 to I. C. C. No. B-6932;

B. T. Jones, Agent:
Supplements Nos. 21 and 23 to I. C. C. No. 3047;
Supplements Nos. 64 and 67 to I. C. C. No. 3055 and MF-I. C. C. No. 16;
Supplements Nos. 4 and 7 to I. C. C. No. 3272 and MF-I. C. C. No. 30;
Supplements Nos. 4 and 7 to I. C. C. No. 3300;
I. C. C. No. 3356 and MF-I. C. C. No. 34;

L. E. Kipp, Agent:

Supplements Nos. 4 and 7 to I. C. C. No. A-3066;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the regulations and practices stated in the said schedules contained in said tariffs, viz.:

Chicago and North Western Railway Company (Charles M. Thomson, Trustee);

Supplements Nos. 7 and 9 to I. C. C. No. 10610, on pages 2 thereof, all provisions shown under the caption "Reshipping or Proportional Rates from Chicago, Ill.";

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):

Supplements Nos. 8 and 10 to I. C. C. No. B-6931, on pages 3 thereof, all provisions shown under the caption "Application of Reshipping or Proportional Rates from Chicago, Ill.";

Supplement No. 8 to I. C. C. No. B-6932, on page 3 thereof, Item 500-C;

Supplement No. 10 to I. C. C. No. B-6932, on page 3 thereof, Item 500-D;

B. T. Jones, Agent:

Supplement No. 21 to I. C. C. No. 3047, on page 5 thereof, Notes 20, 25 and 35; on page 6 thereof, Notes 40 and 47;

Supplement No. 23 to I. C. C. No. 3047, on page 5 thereof, Note 20; pages 6 to 11 inclusive thereof, except Item 110-A;

Supplement No. 64 to I. C. C. No. 3055 and MF-I. C. C. No. 16, page 3 thereof; on page 4 thereof, Notes 38, 40 and 50;

Supplement No. 67 to I. C. C. No. 3055, and MF-I. C. C. No. 16, on page 3 thereof, Notes 20 and 22; pages 4 to 10 inclusive thereof, except Note 45;

Supplement No. 4 to I. C. C. No. 3272, and MF-I. C. C. No. 30, on page 2 thereof, Notes 1 and 22;

Supplement No. 7 to I. C. C. No. 3272, in full;

Supplement No. 4 to I. C. C. No. 3300, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. 3300, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47;

I. C. C. No. 3356, and MF-I. C. C. No. 34, the title page thereof insofar as it cancels schedules suspended by this suspension order; on page 90 thereof, Notes 20 and 22; pages 91 to 95 inclusive thereof; on page 96 thereof, Note 41; on pages 98 and 99 thereof, Note 50;

Agent L. E. Kipp:

Supplement No. 4 to I. C. C. No. A-3066, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. A-3066, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47.

It further appearing, That said schedules make certain increases affecting rates for the transportation of grain, grain products, and grain by-products, carloads, in interstate and foreign commerce, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and

that the use of the regulations and practices therein stated be deferred upon interstate and foreign traffic until the 15th day of May, 1940, unless otherwise ordered by the Commission, and no change shall be made in such regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That this order shall apply to said schedules only to the extent that said schedules apply to transportation subject to Part I of the Interstate Commerce Act.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and upon B. T. Jones and L. E. Kipp, Agents, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission, division 2.

(Seal)

W. P. BARTEL,
Secretary.

[fols. 244-288] Appendix B omitted. Printed side page 20 ante.

APPENDIX B.

Report of Division 2 of the Interstate Commerce Commission in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory, reported at page 353 in Volume 246 of the Interstate Commerce Commission reports.

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Appendix II and Appendix III to the Report of Division 2 in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-barge to Official Territory, 246 I. C. C. 353, as found at pages 385 to 388, inclusive, thereof.

APPENDIX II

Rules affecting the application of proportional rates applying on grain, grain products, and grain by-products, in carloads (using Chicago, Ill., as a representative reshipping point), to destinations in central territory and western termini points (including eastern trunk-line arbitrary points)[1]

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence, as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

[1] These rules (or notes) are taken from Agent B. T. Jones' tariff I. C. C. 3300, effective June 30, 1939, and supplement 7 thereto, effective October 15, 1939.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 71), originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

GRAIN PRODUCTS AND FLOUR (NORTHWEST)

[This rule provides for the milling or malting in transit; also the milling, malting, mixing or reconsignment in transit, and specifies the points at which these services are to be performed.]

GRAIN PRODUCTS NAMED IN NOTE 10 BEARING REFERENCE * (STAR) (NORTHWEST) ALSO BY-PRODUCTS OF GRAIN (NORTHWEST)

Rates on Grain Products and By-Products of Grain, subject to this Note, will apply on Grain Products in Note 10, pages 72 and 73, bearing reference *(star) and on By-Products of Grain (see Note 15, page 74), carloads, originating in the following described territory.

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory, as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 40 in the suspended schedules was modified to read:

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail [1] transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described

[1] Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional), will apply.

below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrive by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail lines from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

NOTE 45. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will ONLY APPLY on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A-1. Rates on Grain (see Note 5, page 71), from Chicago, Ill., * * * subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

A-2. Rates on Grain Products (see Note 10, pages 72 and 73) from Chicago, * * * subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

* * * * *

Note 45 in the suspended schedules reads substantially as above, except that the second paragraph begins with the words "Except as otherwise provided in tariff, as amended," and the words "or water," in the third line, and the parenthetical phrase beginning in the third line and ending in the fourth line, reading "(except Illinois Grain moving via water transportation line)" have been eliminated, and a new paragraph has been added, reading:

"These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co., Tariff No. 41-O, I. C. C. No. 66, and Spring Lake Packet Co., Tariff No. 41-N, I. C. C. No. 59, supplements thereto or successive issues thereof."

APPENDIX III.

Rules affecting the application of proportional rates applying on grain, grain products, and byproducts of grain, in carloads, (using Chicago, Ill., as a representative reshipping point) to destinations in trunk-line and New England territories, and other eastern points, including certain points in eastern Canada [1]

NOTE 20. APPLICATION OF RE-SHIPPING OF PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

* * *

[1] These rules (or notes) are taken from supplement 58, Agent B. T. Jones' tariff, I. C. C. No. 3055, effective June 30, 1939, and supplement 67 thereto, effective October 15, 1939.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, * * * via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * * *

Note 20 in the suspended schedule reads:

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail †† transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-

†† Application via water transportation ÷ eliminated; except as provided in this Note, rates (not re-shipping or proportional) published in tariff as amended will apply.

÷ Increase.

bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. * * *

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., * * * (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways, except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

APPENDIX C.

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718
GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

DECIDED DECEMBER 1, 1941

1. Proposed restriction of reshipping or proportional rail rates on grain and grain products, in carloads, from Chicago, Ill., and other grain rate-break points to eastern destinations, so they will not apply on ex-barge (Illinois Waterways) traffic shown to be just and reasonable and not shown to be otherwise unlawful.

2. Such rates on the ex-barge traffic found legally applicable in the past where the policing provisions of the governing tariffs were strictly complied with.

3. Findings in prior report, 246 I. C. C. 353, clarified and modified accordingly.

Appearances noted in prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

By schedules filed to become effective October 15, 1939, respondent rail carriers in official territory propose to restrict their reshipping or proportional rates on grain and grain products, in carloads, from Chicago, Ill., and other related grain rate-break points, to eastern destinations so they will not apply on ex-barge (Illinois Waterways) traffic. Upon protest of numerous interests the schedules were suspended, hearing was held, the matter was made the subject of a proposed report by the examiner, exceptions and replies to exceptions and oral argument before division 2. In the prior report, 246 I. C. C. 353, the division found that the application of such rates on the ex-barge traffic was without tariff authority and that the proposed schedules merely clarified this situation and were not shown to be unlawful. An order was entered vacating the order of suspension and discontinuing the proceeding.

Petitions for reconsideration addressed to all of the division's findings have been filed by certain protestants, as follows: (1) The so-called Chicago protestants operating elevators and dealing in grain at Chicago, (2) Illinois Agricultural Association, representing shippers located on the Illinois Waterways, (3) Finnegan Warehouse Company, operating an elevator on the Waterways, (4) Inland Waterways Corporation, operating the Federal Barge Lines, and (5) United States Department of Agriculture.

The Montana Flour Mills Company, which operates a mill at Cleveland, Ohio, and ships grain from Kansas City by barge to Chicago, thence by rail, but did not appear at the hearing,

has filed a petition for "leave to intervene," accompanied by a similar petition for reconsideration, addressed to all of the division's findings. However, as it does not give any explanation whatever as to why it did not appear at the hearing, its petitions must be, and are hereby, rejected under Rule II of our Rules of Practice, and will not be further considered. Petitions for reconsideration addressed solely to the division's finding under section 6 of the act were filed by respondents and intervener Chicago Board of Trade. Respondents filed a reply to protestants' petitions,[1] and the intervening western rail carriers filed a reply to all of the petitions. Thereupon the effective date of the vacating order was postponed until the further order of the Commission. The only protestant seeking a further hearing is the Federal Barge Lines, which points out that since the hearing it and certain other barge lines have filed their port-to-port grain rates with us, but this is a fact of which we can take official notice. Certain of the parties ask for reargument. Under the circumstances, we think that no useful purpose would be served by further hearing or reargument and that the matter can properly be disposed of in this report with a view to determining what, if any, modification or clarification of the division's findings should be made on reconsideration of the record in the light of the petitions and replies and our prior decisions.

At the time of the hearing, the barge lines were not subject to our jurisdiction and of course had no rates on file with us. The present tariffs naming the pro-

[1] The western carriers urge that the division's findings are correct under section 6 as well as under sections 1, 2 and 3 of the act.

portional rates carry a so-called limitation rule, whereby they "are applicable only when the entire movement is performed by rail carriers or water-and-rail carriers under rates lawfully on file with us" except that such rule does not affect rates "published carrying provision that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic." They also carry a provision that they will apply on grain reaching "the shipping point via a rail *or water* transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and the rat paid to the reshipping point." To trunk-line territory, they specifically apply to ex-lake grain. To central territory, there are three sets of proportional rates, designated, respectively, as "trans-Mississippi", "Northwest", and "reshipping (Illinois)", the "Northwest" proportionals specifically applying on "shipments which arrive by boat lines at Chicago." The Northwest proportionals are in certain instances higher, and in certain instances lower, than the Illinois proportionals. The rate tariffs are made subject to the transit rules and regulations published in tariffs lawfully on file with us, including the policing rules and a so-called fourth-section rule providing that "in no case shall the combination rate to and from the reshipping point be less than the local rate from the reshipping point." In the proposed schedules, the words "or water" and the provision as to boat lines are omitted, and the rates are made applicable to ex-lake traffic to both central and trunk-line territories.

I. & S. Docket No. 4718—Sheet 3.

The division found that there was and is no common arrangement between the barge lines and respondents for through routes on this traffic, that the ex-

barge traffic cannot comply with the transit rules where the rates for the inbound water haul are not on file with us, and that the maintenance of barge-rail combination rates so much lower than the all-rail rates, particularly where the inbound water haul is so short, results in a breaking down of the all-rail grain rate structure from adjacent origins in Illinois and Indiana. It construed the words "or water" in the present tariffs as referring only to water carriers having rates on file with us. It held that under the circumstances the application outbound of any rate other than the local rate was and is illegal under section 6, that the proposed schedules are not unlawful under section 1, and that the circumstances and conditions surrounding the inbound and combination movement of the ex-barge traffic are so different from those surrounding the inbound and through movement of the ex-rail and ex-lake traffic as not to constitute a violation of sections 2 and 3 of the act.

As to section 6, the division in effect held that a proportional rate by a carrier subject to the act is never legal under section 6 unless the other factor of the through rate is lawfully on file with us under paragraph 7 of that section or applies by common carrier by water under paragraph 11(b) thereof. As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act. Under the circumstances, we think that the division's finding under section 6 is not warranted as applied to shipments of this ex-barge grain where the policing provisions were strictly complied with, namely, adequate proof was furnished of the identity of the in-

bound water carrier, the origin of the traffic, and the inbound rate paid thereon.

To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to 13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combinations will be 1.75, 4.75, and 0.75 cents, respectively, lower than the all-rail rates.

To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion

of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict

conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5-cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul,

and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound

and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local

rates or joint barge-and-rail rates lower than the combinations.

The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered.

COMMISSIONER LEE concurs in the result.

EASTMAN, *Chairman*, dissenting in part:

For many years the respondent railroads have applied eastbound from Chicago what they termed "reshipping or proportional rates," which were lower than the corresponding local rates, on grain and grain products brought to Chicago by rail or by water. Similar rates were applied under like conditions from certain related points, but Chicago is the point of predominant importance. These reshipping rates were applied from

the beginning on grain brought to Chicago by lake vessel and, after the opening of the Illinois Waterways, they were applied on grain brought in by waterway barge. In the suspended schedules it is proposed to eliminate their application to this barged grain.

Division 2 concluded "that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," and found "that the schedules under suspension are not shown to be unlawful." The conclusion as to the applicability of the rates in the past met with vehement protests from all parties to the proceeding including respondents, except the intervening western railroads, and it is now reversed, almost without discussion.

I. & S. Docket No. 4718—Sheet 6.

I agree with this reversal, but believe that in view of the elaborate discussion of this matter by division 2, the reasons why its conclusion was unsound should be pointed out clearly and explicitly.

After citing *Kansas City Transp. Bureau* v. *Atchison, T. & S. F. Ry. Co.*, 16 I. C. C. 195, 201, to the effect that a "proportional rate means a part of or a remainder of the through rate or it means nothing at all," and *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 69 I. C. C. 185, 188, to the effect that it is well settled that reshipping and proportional rates "are inseparably connected with and form parts of the rates applying to through transportation," division 2 relied primarily on the following from *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, 575:

> We have found that a proportional rate is one which applies to a part of a through transportation

which is entirely within the jurisdiction of the Interstate Commerce Act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. (Emphasis supplied.)

The division went on to say that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common carriers by water. It is elemental that a proportional factor is but a part of a through rate. It follows that the proportional rate and the rate with which it is combined to make a through rate must be on file with us."

Singularly enough, after concluding from this reasoning that the "proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," the division found that the "schedules under suspension are not shown to be unlawful." Yet, as stated in the present report, the reshipping or proportional rates are by those schedules "made applicable to ex-lake traffic to both central and trunk-line territories," and it is conceded that the rates charged by the lake carriers are not on file with us or within the jurisdiction of the act and that these lake carriers are not common carriers. The same reasoning which led the division to conclude that the reshipping or proportional rates had never been legally applicable on the ex-barge grain would clearly require a similar conclusion as to the ex-lake grain; but this fact was ignored.

It was not ignored by respondents, and hence their protests against the decision. They saw in it, and correctly, the enunciation of a principle which would condemn, not only the application of the reshipping or proportional rates in issue on ex-lake grain, but also the many other rates of like characteristics which have for

years been published to apply to rail transportation to or from inland or coastwise ports on traffic carried from or brought to the port by unregulated contract or private water carriers. They cited the numerous cases in which we have over many years prescribed or approved such rates, which we have sometimes termed rates "in the nature of proportional rates" and which are known variously as ex-lake, ex-river, ex-ocean, lake cargo, reshipping, transshipment, import, and export rates. As is stated in the present report, in considering the principle enunciated by division 2:

> I. & S. Docket No. 4718—Sheet 7.
>
> As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act.

This is, indeed, the sole reason given for finding that the conclusion of division 2 upon this matter of rate applicability was "not warranted." Obviously the fact thus stated does not in itself prove that the principle is wrong. The matter, therefore, plainly calls for further consideration.

As shown above, division 2 relied primarily on the statement in *Chicago and Wisconsin Points Proportional Rates, supra*, (I dissented from that decision) that we "have found that a proportional rate is one which applies to a part of a through transportation *which is entirely within the jurisdiction of the Interstate Commerce Act*," qualifying this statement, however, by another to the effect that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common car-

riers by water." No citation followed the statement quoted from the *Chicago and Wisconsin case*, and I have been able to locate no case where such finding was made. *Conference Ruling 304(b)* did define a proportional rate in this manner, but our conference rulings were long since rescinded as unreliable. Furthermore, I call attention to the paragraph which followed the statement quoted:

> These proposed rates derive no validity from such analogy as they may be thought to bear to proportional rates by rail to and from the ports which differ from the corresponding local rates and which apply on traffic brought to or carried from the ports by common carriers by water, or to so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to contract carriers by water. In section 6(13)(c) of part I of the act the publication of proportional rates by rail to or from the ports which differ from the corresponding local rates, and which apply on traffic that has been brought to the port or is carried from the port by a common carrier by water, is specifically authorized. Part II of the act contains no similar authorization, either express or implied, for the publication of proportional rates, such as these, in connection with the truckload rates of common or contract carriers subject to part II or the carload rates of common carriers by railroad subject to part I. All the carriers, including respondents, which would participate in the through transportation contemplated by respondents' tariffs are subject to either part I or part II of the act and are therefore amenable to the provisions of those parts governing the publication of rates and to regulations which we have promulgated thereunder. Consequently, the reports, including the report in *Tariffs Embracing Motortruck or Wagon Transfer Service*, 91 I. C. C. 539, cited by respondents, in which we have recognized the legality of so-called

> proportional rates or rates in the nature of proportional rates published by certain

> rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water, are not in point. Where, as here, both the carriers into and out of the reforwarding points are subject to the Interstate Commerce Act, we have in no case given our approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations.

It will be noted that in this paragraph it is made clear that "we have recognized the legality of so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water," and one of these cases is cited. In that case, as it happens, a dissenting opinion relied on *Conference Ruling 301(b)*. The case, therefore, definitely overruled that conference ruling. The paragraph cites section 6(13)(c) [now 6(11)(b)] as justification for these cases, without explaining how this could be so in view of its limitation to traffic brought to or carried from the port by a common carrier by water. Finally the paragraph, in effect, limits the previous statement "that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the Interstate Commerce Act" to situations where "both the carriers into and out of the reforwarding points" are subject to the act, which is not the situation here under consideration.

As often happens, confusion has been caused by definitions. The act contains no definition of a "proportional" rate except that which is found in section 6(11)(b), which was originally enacted in the Panama Canal Act of 1912 and reads as follows:

> By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

Yet proportional rates which do not conform to this definition have from the very beginning been published by the railroads and been recognized as lawful and prescribed by us. It is clear that the definition was for the particular purposes of the Panama Canal Act paragraph in which it is found and which authorizes us to prescribe "proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier." The history of the Panama Canal Act makes it evident that this provision was motivated by a fear that the Commission might not prescribe such rates in the absence of definite prompting by Congress.

In our decisions, also, references will be found to "true proportional" rates as distinguished from those which are "in the nature of proportional rates." The carriers have often conformed to such a distinction by using, where the through transportation is subject only in part to our jurisdiction, some

other designation than "proportional", such as "reshipping", "transshipment", "ex-lake", "ex-river", etc. But this is a matter of no importance except to those who are concerned with precise terminology.

There is nothing in the act which makes a "true proportional" rate lawful or which makes a proportional rate unlawful if it is not of this Simon pure variety. The real question is whether rates, by whatever names they may be called, are lawful which are lower than the corresponding local rates and which are confined in their application to traffic that has had a prior or will have a subsequent movement to or from a point beyond.

One answer to this question, and the one given in all of the petitions, is that the Commission has in many past cases, and consistently, approved and even prescribed rates of this character, and has done so, not only where the prior or subsequent movement was subject to its jurisdiction, but also where it was not, including many situations where the prior or subsequent movement was by contract or private carriers. This is a persuasive answer, but I think it is well to go further and show that these past decisions are sound.

The significant and questionable thing about proportional rates or rates of like nature is that they are normally less than the corresponding local rates. Manifestly this fact does not in itself make them unreasonable under section 1. Whether it makes them unjustly discriminatory under section 2 is a more difficult question. For convenience I quote that section:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges,

demands, collects, or receives from any other person or persons for doing for him or them *a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. (Emphasis supplied.)

As between local rates and lower proportional rates between the same points, the essential questions under section 2 are whether they apply to like kinds of traffic and whether the transportation is under substantially similar circumstances and conditions. Sometimes a dissimilarity in the immediate circumstances and conditions of transportation can be shown, as in the case of the lake-cargo coal rates, where the concentration of deliveries at a very few points makes the service cheaper than that rendered under the local rates, which permit deliveries at many points over a wide terminal area. In other cases, however, as in the present proceeding, no dissimilarity of this character can be shown.

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In a very early case, *New York Board of Trade and Transp.* v. *Pennsylvania R. Co.*, 4 I. C. C. 447, the Commission found it unlawful, under section 2, for railroads to charge less on import traffic from ports to inland destinations than on like domestic traffic from and to the same points. There was no evidence of any difference in the costs of service. The decision was reversed by *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, on the principal ground that the circumstances and conditions, more particularly the commercial and competitive conditions, surrounding the two forms of traffic were dissimilar. Later

decisions of the Supreme Court, however, indicate that the "circumstances and conditions" to which section 2 refers are those which are incident to the transportation service rendered and not those which are extraneous thereto, and that the "exigencies of competition," in particular, do not justify discrimination. *Wight* v. *United States*, 167 U. S. 512; *Interstate Commerce Commission* v. *D., L. & W. R. R. Co.*, 220 U. S. 235; *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 325; *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57; and *A., T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. A recent decision of the court, *United States* v. *Trucking Co.*, 310 U. S. 344, 352-3, has this interesting pronouncement:

> The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when "undue", "unjust", "unfair", and "unreasonable." And the courts have always recognized that Congress intended to commit to the Commission the determination by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages and discrimination.

In a footnote to which reference is made in the last quoted sentence, the court refers to the *Texas & Pacific case*, above cited, as an "apparent exception, at an early date before the function of the Commission had become fully outlined against the background of time and the empiric pattern of litigation."

Nevertheless the Commission, in the exercise of this apparently rather wide discretion, has not since the *Texas & Pacific case* found import or export rates, or other rates in the nature of proportional rates, to be in violation of section 2 because they were lower than

corresponding local rates, and in my judgment with good reason. It may be argued with considerable force that although the traffics to which the two kinds of rates apply are the same in content, the dissimilarity in their origins or destinations and in commercial and competitive conditions prevents them from being a "like kind of traffic" within the meaning of section 2. However, I think the sounder view is that there is an essential dissimilarity in attendant circumstances and conditions as between local traffic and traffic which is being transported part of the way from an origin or to a destination which lies beyond, and that this dissimilarity is not extraneous to the transportation service rendered but incident thereto, for the reasons which follow.

As railroad rates are made, by long-established custom, those for long hauls normally are relatively lower mile for mile than those for shorter hauls, and often to a greater extent than

is justified by the fact that terminal costs are a constant factor. In other words, some preference has commonly been given to the longer hauls, and this has met with rather general approval. This tendency has not been confined to situations where joint rates are in effect. It has also prevailed where the through charges have been on a combination basis and the principle could be given effect by the railroads only through the publication of proportional rates and the like. Nor has it been confined to hauls which are wholly by rail, for it has been extended also, and quite naturally, to hauls which are partly by rail and partly by some other form of transportation, and regardless of whether the latter is subject to the Interstate Commerce Act.

This thought was expressed quite definitely and explicitly in *Central Pennsylvania Coal Producers Assn.* v. *B. & O. R. Co.*, 196 I. C. C. 203, 235-6, as follows:

> Except as to traffic to nonadjacent foreign countries, the operators allege that the maintenance to the ports of Philadelphia and Baltimore of transshipment rates which are different for inside-the-capes than for outside-the-capes traffic, contravenes the provisions of section 2 of the act. As previously stated, *the rail service rendered all transshipment coal is substantially the same.* The coal, which is charged the outside-the-capes rates, other than that which is exported, usually moves to New York Harbor or to New England, and that charged the higher inside-the-capes rates generally moves a relatively short distance by water to points within the respective harbors. *Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed.* We have found on various occasions that proportional rates which vary in amounts depending on the origins or destinations are not unlawful because of that fact. *Southern Kansas Grain Asso.* v. *C. R. I. & P. Ry. Co.*, 139 I. C. C. 641. *Transshipment rates are also similar to export rates in that we have no jurisdiction over the transportation which takes place beyond the transshipment piers.* We have found that the maintenance of different export rates from the same origin to the same port, dependent upon the foreign destination, is not unlawful. *Western Export Iron and Steel Case*, 4[illegible] I. C. C. 129. In *Detroit* v. *C. & O. Ry. Co.*, 77 I. C. C. 98, division 1 found, among other things, that a rate on coal from mines in West Virginia to Toledo, for transshipment to Detroit, Mich., which was higher than on coal destined to certain west-bank Lake Michigan and Lake Superior ports, was not unjustly discriminatory. It is significant that transshipment rates to the ports of Philadelphia and Baltimore, varying according to whether the destination of the traffic was within or beyond the

capes, *have been maintained for over a quarter of a century without complaint under section 2* of the act, although they have been assailed under other sections of the act by various interests, including these complainants. The latter, in the

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Eastern Bituminous Coal case, sought outside-the-capes rates that would have widened the spread under the inside-the-capes rates that then existed and still exist. Upon the facts of record we are of the view that the transshipment rates assailed are not unjustly discriminatory. (Emphasis supplied.)

It will be noted that the railroads there maintained "transshipment" rates on coal which were in the nature of proportional rates and lower than the corresponding local rates; that there were two sets of these "transshipment" rates, one lower than the other, dependent on the ultimate destinations of the coal at the end of the water haul, although substantially the same rail service was rendered all transshipment coal; and that the transportation by water was not subject to our jurisdiction. Yet the Commission found that there was no violation of section 2, either in the fact that the transshipment rates were lower than the local rates or in the fact that one set of transshipment rates was lower than the other. The reason given was that such rates "like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed."

Stating the principle in another way, while the transportation service rendered between two points under a local rate and under a proportional or other like rate may be physically identical, yet it is not performed under circumstances and conditions which are similar in

the one case and in the other, for the transportation for which the proportional or other like rate is charged is part of a through movement from or to a point beyond, whereas *the transportation for which the local rate is* charged is complete in and of itself. It is quite true that in those instances where the two services are physically identical, there is no difference in cost which can justify making the proportional or other like rate lower than the local rate, except such as may possibly result from a difference in the volume of movement; but cost of service is not the only factor that may properly be given weight in the making of railroad rates, as we have often recognized. The practice of charging less for transportation which is a part of a longer through haul than for strictly local transportation between the same points has the sanction of accepted custom, and in my judgment it is the chief justification for the proportional rates or rates of like nature, lower than the corresponding local rates, which we have in so many cases approved or prescribed, although difference in cost of service has often been an additional justification.

Turning from section 2 to section 3, the same considerations apply, with the addition that the exigencies of competition may also justify differences in rates under the latter section, and, to establish violation, proof of injury from the differences is also necessary. Those who are charged the higher local rates are seldom able to furnish such proof, because of the lack of a competitive relation with those who pay the lower rates.

These are the reasons, stated explicitly and fully to the best of my ability, why I agree with the reversal of the conclusion of division 2 "that the proportional rates here in issue have never been applicable on this barge traffic moving

on unfiled rates." Lest there be misunderstanding, however, let me say that it does not follow from these reasons that a proportional rate or rate of *like nature* may not be unreasonable under section 1 or that it may not, under certain conditions, violate either section 2 or section 3; nor does it follow that such rates must always be established. They merely go to the point that the mere fact that such rates are lower than corresponding local rates does not in itself prove a violation of any of these sections.

The present report makes the further finding that "The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful." With this I do not agree. It is prefaced by a brief discussion which I quote here for convenience in reference. The contention that the schedules are unlawful is, according to the report, based primarily on the result that "the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same." It is said that this is "also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges." Then follows this comment:

> To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this

proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations.

To trunk-line and New England territories, the reshipping rates now apply uniformly on ex-rail and ex-water shipments, and they do not differ with the length or character of the inbound haul or with the origin territory. To central territory, there are three different sets of reshipping rates. Those designated "Trans-Mississippi" are the lowest and apply on ex-rail grain from territory of which Kansas City is representative. Those designated "Illinois Reshipping" are somewhat higher and apply on ex-rail grain from origins in Illinois. Those designated "Northwest" are uniformly 3 cents higher than the "Trans-Mississippi" rates and are generally higher than the "Illinois Reshipping" rates. They apply on ex-rail grain from territory of which Minneapolis is representative, and also on both ex-lake and ex-barge grain. After the proposed schedules take effect, the reshipping rates will cease to apply, with very minor exceptions, on all ex-barge grain, but will continue to apply, as above indicated, on all ex-rail and ex-lake grain.

The report states that the "proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the

profits of the Chicago elevator operators." I do not so understand the evidence. The table on page 361 of the prior report shows clearly that the farmers are paid the Chicago market price less the "costs incident to making delivery at Chicago," which consist mainly of

the transportation charges. It follows that the farmers whose grain can be transported by barge receive the benefit, in the prices paid for their grain, of the low barge rates, and that this benefit does not go to the Chicago elevator operator. For this reason, ex-barge grain has exactly the same value in the elevator as ex-rail or ex-lake grain, and naturally it will not be moved eastbound on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates.

While it is true, to some extent, that the combination of the barge rate to Chicago plus the local rate eastbound is lower than the combination of the rail rate from the same origin point to Chicago plus the reshipping rate eastbound, this fact will not enable the ex-barge grain to move from Chicago on the local rate, because the benefit of the low barge rate now goes to the farmer and cannot be used by the elevator operator to offset the higher level of the local rates as compared with the reshipping rates. In other words, the grain is brought by the Chicago operator and is shipped thereto without knowledge of where it will go after it reaches Chicago, and the through combination rates to eastern points do not enter into the transaction. This is, of course, true of practically all grain shipments to primary markets, and the through transportation which is reflected in proportional or reshipping rates therefrom is to this extent fictional; but it is no more fictional in the case of this ex-barge grain at Chicago than it is of grain which moves from the farms into the primary market of Kansas City.

As I understand it, the effect of the proposed schedules, unless the prices paid to the farmers whose grain is barged are reduced, will be to limit the outlet of the ex-barge grain to local consumption in Chicago and to

the lake and lake-rail routes to eastern points. If this outlet is sufficient, the situation will not be changed, except that the rail respondents will be deprived of the ex-barge traffic. If it is not sufficient, however, as in the winter months when the lake routes are closed, the producers of the grain which is now barged will either have to ship by rail to Chicago, with a consequent sacrifice in prices received, or sustain a similar sacrifice by accepting less from Chicago buyers for barged grain than they now receive. It is significant that a witness for respondents testified that the schedules under suspension were proposed "with the hope that we could drive this business off the water and back onto the rails where it belongs." If this hope is realized, the farmers who now ship by barge will certainly suffer in the prices paid for their grain. However, the effect of the proposed schedules is not the primary question, but whether they are in violation of the law.

In view of the long continuance of the reshipping rates and having in mind the level of the proportional rates which we have prescribed on grain in western territory, it can be urged with force that the local rates are unreasonable, under

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section 1, for application on this ex-barge grain. However it is unnecessary to go into this, if, as I believe, the proposed schedules are clearly unlawful under sections 2 and 3.

Considering section 2, it is conceded that the "physical carriage beyond the reshipping point is substantially the same" on the ex-barge grain as on the ex-rail and ex-lake grain, and the traffic in all three instances is clearly "like traffic." So far as the circumstances and

conditions are concerned which relate to the haul beyond the reshipping point when considered as a part of a through haul, the reasoning of the report seems to be that, comparing the ex-barge with the ex-rail and ex-lake grain, these circumstances and conditions are dissimilar because of the differences in the "relative length and nature of the inbound and through service." Therefore it is not unlawful, under section 2, to charge more for an eastbound haul of ex-barge grain from Chicago than for an identical haul of ex-rail or ex-lake grain.

While we have found that proportional rates or rates of like nature may lawfully vary with the length and nature of the haul to or from the point beyond, it is not necessary that there be such a variance, and the fact is that ordinarily there is none. This is as true of the proportional rates which we have prescribed as of those which the carriers have voluntarily established. Here there is now no variance whatever in the reshipping rates to trunk-line and New England territories. They are the same whether the inbound haul is by rail or by water or whether it is short or long. It is now proposed to cancel the application of these rates to ex-barge traffic, even if it moves from such comparatively distant points as Kansas City and St Louis, but to continue to apply them to ex-rail or ex-lake traffic regardless of the length and nature of the inbound haul. Clearly if the rule of variance is to be followed at all, it must be equally applied, and it cannot be invoked to defend a variation which is wholly inconsistent with the rate structure as a whole.

When it comes to the reshipping rates to central territory, there is a variation which is now dependent partly on the general origin territory in which the grain

originates and partly on whether it moves by rail or by water. To all ex-water traffic, however, reshipping rates now apply which are as high as any of the lot, except to a relatively few points in central territory, to which somewhat higher reshipping rates apply on grain originating in Illinois and moved by rail to Chicago. The "Northwest" rates, which are the ones which apply on the ex-water traffic, are uniformly 3 cents higher than the "Trans-Mississippi" rates, and they average higher than the "Illinois Reshipping" rates. They apply to the ex-lake traffic whether it originates at Duluth or at some relatively nearby port on Lake Michigan, and they apply on the ex-barge traffic whether it originates at Kansas City or at some point quite near to Chicago on the Illinois Waterway. Much the same is true of the reshipping rates which apply on the ex-rail grain. It could be argued with force that the present rate situation is unjustly discriminatory as respects the ex-barge grain, for if it originates at Kansas City or St. Louis, it is charged reshipping rates which are 3 cents higher than those which apply on ex-rail grain from the same points, and if it originates

in Illinois, it is charged reshipping rates which average materially higher than those which apply on ex-rail grain from the same points or points in the same general territory. Certainly there can be no defense, based on the length and nature of the inbound haul or any other circumstance, for depriving the ex-barge grain entirely of the benefits of the reshipping rates while permitting such rates, of the same or a lower level, to apply on ex-rail and ex-lake grain whatever the point of origin or length of the inbound haul.

Clearly this is a case where it is proposed to charge

persons shipping ex-barge grain a greater compensation than is charged other persons shipping ex-rail or ex-lake grain for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and clearly, also, this would result in a violation of section 2.

The same facts which spell a violation of section 2, if the proposed schedules become effective, likewise spell a violation of section 3, when coupled with the positive evidence that these schedules will result in injury to the producers of ex-barge grain, at least during the season when transportation by lake from Chicago is not available. In this connection it was pointed out in the prior report that under section 3(1), as amended by the Transportation Act of 1940, "undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful." The undue prejudice with which I am concerned, however, is not to the operators of the barge lines but to the shippers of the grain.

I realize that under the doctrine enunciated by the Supreme Court in its recent decision in *United States v. Trucking Co., supra,* any decision which the Commission reaches in its wisdom with respect to a violation of section 2 or section 3 is likely to be sustained, if questioned in court. That, however, is an additional reason for great care in arriving at our decision.

Question has been as to whether the failure to apply reshipping rates to grain which has been trucked into Chicago results in violation of sections 2 and 3. This question is not here in issue. My tentative opinion upon it is that where the movement by truck is from territory from which grain can be moved by rail or by water

to Chicago subject to the application of the reshipping rates eastbound, the failure to apply such rates to the grain brought in by truck does result in violation of sections 2 and 3, provided adequate provisions for the identification and policing of such shipments are practicable and enforceable. The prior report reflected doubt as to whether such provisions are practicable with respect to the ex-barge grain, but in the present report it seems to be conceded that they are practicable with respect to such grain, although they may not have been properly enforced in the past, and with this view I agree.

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ALLDREDGE, *Commissioner*, dissenting:

The issues in this proceeding were defined by the suspension order. This order brought in question the lawfulness of the suspended schedules. It did not, of course, present any issue concerning the lawfulness of respondents' rates or practices in the present or past. The section 6 finding in the prior report, therefore, was not in response to any issue presented, was in disregard of the rights of all of the parties to a hearing, and was, therefore, clearly improper. Of course, I have no objection to the present report to the extent that the finding is rescinded, but generally I disagree for reasons stated in my dissenting expression in the prior report.

I am authorized to state that Commissioners PORTER and JOHNSON join in this expression.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of December, A. D. 1941

Investigation and Suspension Docket No. 4718

Grain Proportionals Ex-Barge to Official Territory

It appearing, That on July 31, 1941, division 2 made and filed its report and order in the above-entitled proceeding, and that subsequently certain petitions for reconsideration and replies to said petitions, enumerated in the report of the Commission of this date, were filed;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed its report on reconsideration of the record in the light of said petitions and replies and our prior decisions, in which report the findings of division 2 are modified and clarified in certain respects, and which report, together with said report of division 2, are hereby referred to and made parts hereof:

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of the schedules enumerated and described in said order, be, and it is hereby, vacated and set aside as of December 22, 1941, and that this proceeding be discontinued.

By the Commission.

(Seal) W. P. BARTEL,
Secretary.

[fol. 329] In District Court of the United States

Civil Action. File No. 3714

[Title omitted]

Answer of Interstate Commerce Commission—Filed January 23, 1942

Now comes the Interstate Commerce Commission, one of the defendants herein, by its counsel, and in answer to the Complaint filed in the above-entitled proceedings respectfully represents:

1. For the purpose of this suit the Commission admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the Complaint.

2. The Commission denies the allegations of paragraph 22 of the complaint insofar as they are inconsistent with the findings of the Commission set forth in its reports and orders of July 31, 1941, and December 1, 1941, annexed to said Complaint as Appendices B and C thereof, respectively, and otherwise denies the materiality of the allegations of said paragraph.

3. The Commission denies each and every allegation contained in paragraph 23 of the Complaint.

4. Further answering the allegations of the Complaint, the Commission alleges that in the proceedings in which [fol. 330] the aforesaid reports and orders were made and entered, the parties thereto, including the plaintiffs herein, were and each of them was accorded the full hearing provided by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs by their counsel; that in briefs filed in said proceedings and in oral argument questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including questions raised by plaintiffs in this suit, and the Commission determined said matters and

entered and served upon plaintiffs and other interested parties its reports and orders; that said reports and orders include the Commission's findings of fact, conclusions and requirements in the premises, and that upon the evidence aforesaid the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said report support the order here in question and that said findings and conclusions were and are and each of them was and is fully supported and justified by the evidence adduced in said proceedings.

The Commission further alleges that in making said orders it considered and weighed carefully each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings and their respective counsel, including matters covered by the allegations of the Complaint herein.

The Commission further alleges that said orders were not made or entered by it either arbitrarily or unjustly [fol. 331] or contrary to the relevant evidence or without evidence to support them; that in making said orders the Commission did not exceed its authority and the Commission denies each and all the allegations to the contrary contained in said Complaint.

Except as herein expressly admitted the Commission denies each and all of the allegations contained in the Complaint insofar as they conflict with the allegations herein or with the statements, findings, determinations or conclusions of fact included in the aforesaid reports of July 31, 1941, and December 1, 1941, attached to said Complaint as Appendices B and D thereof, respectively, which said reports together with the orders issued therewith are hereby referred to and made part of this answer.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, the Complaint herein should be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fols. 332-333] *Duly sworn to by Walter M. W. Splawn. Jurat omitted in printing.*

[fol. 334] In District Court of the United States

Civil Action. No. 3714

[Title omitted]

Answer of the United States of America—Filed February 5, 1942

Comes now the United States of America, by its counsel, and for answer to the complaint herein says that the United States admits the allegations of Paragraphs 1 to 21, inclusive, of the complaint.

For Further Answer to the remaining portions of the complaint the United States makes the following statements and representations:

1. This is an action against the United States to set aside an order of the Interstate Commerce Commission instituted pursuant to the provisions of 28 U. S. C. 41 (28), 45 and 46.

2. Under the provisions of 28 U. S. C. 45(a) the Attorney General has charge and control of the interests of the Government in this action. This section, however, does not impose upon the Attorney General the duty of defending the Commission's order in all cases, nor confer authority on him to dispose of or discontinue such an action as this over the objection of other parties; and it is expressly provided in such section that such other parties [fol. 335] may prosecute, defend, or continue the proceeding unaffected by the action or nonaction of the Attorney General herein.

3. Under the provisions of Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1291, the Secretary of Agriculture was authorized to intervene, and did intervene, in the proceeding before the Interstate Commerce Commission; and he is further given the rights of a party before the Commission to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. Pursuant to said section and to 28 U. S. C. 45(a), the Secretary of Agriculture has served notice of intervention as a plaintiff in this action and has applied for leave to file a complaint. As a plaintiff, the Secretary

of Agriculture challenges the validity of the order of the Interstate Commerce Commission and prays that it be set aside.

4. The Interstate Commerce Commission has been joined as a party defendant, has answered the complaint by asserting the validity of its order, and will be represented at the hearing by its own attorneys.

5. For the Attorney General to defend the order of the Interstate Commerce Commission would require him to assert a position on behalf of the United States which is attacked by the head of a coordinate branch of the Executive Department of the Government, and possibly to assume, at some stage of this proceeding, the position of advocate for both sides of the controversy.

6. Under the circumstances recited, and in view of the adequate representation of the interests of the United [fol. 336] States in this case, wherever they may lie, the allegations of Paragraphs 22 and 23 of the complaint are neither admitted nor denied.

Frank Coleman, Smith R. Brittingham, Jr., Special Assistants to the Attorney General, Counsel for the United States.

Thurman Arnold, Assistant Attorney General. J. Albert Woll, United States Attorney.

[fols. 337-339] I certify that a copy of the foregoing answer was this day mailed to the following persons:

Nuel Belnap, Esq., Walter Burchmore and Belnap, 2106 Field Building, Chicago, Illinois, Counsel for plaintiff.

Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington, D. C., Counsel for Interstate Commerce Commission.

Mastin C. White, Esq., Solicitor, U. S. Department of Agriculture, Washington, D. C., Counsel for Intervening Plaintiff, Secretary of Agriculture.

Frank H. Cole, Jr., and Erich W. Lademann, Esqs., Attorneys, Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois.

Leo P. Day, Esq., Attorney, New York Central Railroad Company, Chicago, Illinois.

Horace L. Walker, and Bryce L. Hamilton, Esqs., Attorneys, New York, Chicago and St. Louis Railroad Com-

pany, 1400 First National Bank Building, Chicago, Illinois.

Theodore Schmidt and George F. Dyche, Esqs., Attorneys, Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois.

Horace L. Walker and William G. Wise, Esqs., Attorneys, Chesapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois.

Counsel for the Several Railroad Defendants.

S. R. Brittingham, Jr. Special Assistant to the Attorney General.

February 2, 1942.

[fol. 340] In District Court of the United States

Civil Action File. No. 3714

[Title omitted]

Answer of the Baltimore and Ohio Railroad Company, the New York Central Railroad Company, the New York, Chicago and St. Louis Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railway Company.—Filed January 6, 1942

Now come the Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and the Chesapeake and Ohio Railway Company, by their respective attorneys, and file this their joint and several answer to the complaint herein, and say:

First Defense

The assailed order of the Interstate Commerce Commission is not the character of order which this Court is authorized to enjoin or set aside, and this Court lacks jurisdiction over the subject matter in that regard.

Second Defense

This Court has no jurisdiction to enjoin these defendants, or any of them, from making effective or enforcing any change or changes in their schedules of rates for the [fol. 341] transportation of property by rail in interstate commerce.

Third Defense

Plaintiffs do not have the interest or standing requisite to enable them, or any of them, to bring and maintain this suit.

Fourth Defense

The complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted by this Court.

Fifth Defense

1. These defendants, in answer to paragraph 1 of said complaint, deny the allegations of the last sentence therein.

2. These defendants admit the allegations of paragraphs 2, 3, 4, 5, 6, 15, 16, 17, 18, 19, 20 and 21 of said complaint.

3. These defendants, in answer to paragraph 7 of said complaint, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein.

4. These defendants, in answer to paragraphs 8, 10, 11, 12, 13 and 14 of said complaint, admit that they are corporations as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

5. These defendants, in answer to paragraph 22 of said complaint, deny the allegations of the first, sixth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth sentences therein; and allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the remaining sentences therein.

[fols. 342-343] 6. These defendants, in answer to paragraph 23 of said complaint, deny each and every allegation therein.

7. Further answering, these defendants deny each and every allegation of said complaint not herein specifically admitted or otherwise specifically answered; deny that plaintiffs are entitled to the relief prayed for in said complaint, or any part thereof, or any relief whatsoever.

Wherefore, these defendants pray that they, and each of them, be dismissed as defendants in this cause, that said

complaint be dismissed, and that they have and recover their costs.

Frank H. Cole, Jr., Erich W. Lademann, Attorneys for The Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois, Horace L. Walker, Bryce L. Hamilton, Attorneys for The New York, Chicago and St. Louis Railroad Company, 1400 First National Bank Building, Chicago, Illinois, Leo P. Day, Attorney for The New York Central Railroad Company, LaSalle Street Station, Chicago, Illinois, Theodore Schmidt, George F. Dyche, Attorneys for The Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois, Horace L. Walker, William G. Wise, Attorneys for The Chesapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois.

Receipt is hereby acknowledged of a copy of the foregoing answer this 6th day of January, A. D. 1942.

Robert W. Burchmore, Nuel D. Belnap, Attorneys for Plaintiffs.

[fol. 344] In District Court of the United States

Civil Action File No. 3714

[Title omitted]

Petition of Intervention of the Secretary of Agriculture—Filed February 6, 1942

To the Honorable the Judges of Said Court:

The Secretary of Agriculture of the United States moves for leave to intervene as a plaintiff in this action, in order to assert the grounds of complaint set forth in his proposed complaint, a copy of which is attached, pursuant to [fol. 345] the authority contained in Section 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 36; 7 U. S. C. 1940 ed. 1291), and Section 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940 ed. 45a).

Mastin G. White, Solicitor, United States Department of Agriculture, Washington, D. C.

Haskell Donoho, Of Counsel.

Certificate of Service

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 23d day of January, 1942.

Haskell Donoho, Senior Attorney, United States Department of Agriculture, Washington, D. C.

[fol. 346] In District Court of the United States

Civil Action. File No. 3714

[Title omitted]

Complaint

1. The Secretary of Agriculture of the United States, intervening plaintiff, adopts by reference the complaint of the original plaintiffs, Cargill, Incorporated, Norris Grain [fol. 347] Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, with the exception of paragraph 22 thereof, and by way of further complaint states:

2. The Secretary is a party in the case captioned Grain Proportionals, Ex-Barge to Official Territory, Investigation and Suspension Docket No. 4718, which culminated in the order of the Commission of December 1, 1941.

3. If the order of the Commission, mentioned above, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

4. If the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

5. If the order, referred to above, becomes effective, it will result in the shifting of grain from barges to the rail-

roads during a period of national crisis when there is every reason to believe that railroad facilities will be taxed to the utmost.

6. The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

[fols. 348-350] 7. The order of the Interstate Commerce Commission, referred to above, is unlawful and void and beyond the power of the Commission to make in that the Commission erred in failing to reexamine, in the light of the provisions of Section 303(b) of the Transportation Act of 1940, its old decisions which indicated that the Commission should not permit the use of rail proportionals and reshipping grain rates east of Chicago on water-borne shipments reaching Chicago via carriers which had not filed tariffs with the Interstate Commerce Commission or some other appropriate regulatory agency.

Wherefore, intervening plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until the final determination of this cause, and that, upon the final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted, Mastin G. White, Solicitor, United States Department of Agriculture, Washington, D. C.

By direction of the Secretary.
Haskell Donoho, Of Couns

[fol. 351] In District Court of the United States

Civil Action File. No. 3714

[Title omitted]

Petition of Intervention and Answer—Filed February 6, 1942

To the Honorable the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now come The Alton Railroad Company, a corporation under the laws of the State of Illinois, The Atchison, Topeka and Santa Fe Railway Company, a corporation under the laws of the State of Kansas, Chicago, Burlington & Quincy Railroad Company, a corporation under the laws of the State of Illinois, Charles M. Thomson, Trustee of Chicago & North Western Railway Company by virtue of an order entered by this Court in a proceeding pending therein, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by virtue of an order entered by this Court in a proceeding pending therein, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company by virtue of an order entered by this Court in a proceeding pending therein, and Illinois Central Rail-[fol. 351a] road Company, a corporation under the laws of the State of Illinois, hereinafter referred to collectively as interveners, and move the Court for leave to intervene in the above-entitled cause, and to become parties thereto in order to protect their rights.

Each of the railroad corporations, parties to this petition, and each of the petitioning trustees at all times since the respective dates of their appointments as such, were and now are common carriers for hire engaged in the transportation of persons and property by rail in state, interstate and foreign commerce, and were and now are engaged in the operation of a line or lines of railroad within the State of Illinois among other States, and in particular between Chicago, Illinois, and western points, including other points in Illinois. Interveners are parties in interest to the proceeding before the Interstate Commerce Commis-

sion in which the order herein complained of was made and were parties to and participated in said proceeding. They desire to intervene in this cause in behalf of the defendants, to answer the amended complaint herein, and to participate in the trial of said amended complaint as parties defendants.

The joint and several answer of interveners to plaintiffs' amended complaint is as follows:

I

Interveners, in answer to Paragraph 1 in plaintiffs' complaint, deny the allegations of the last sentence therein.

II

Interveners admit the allegations of Paragraphs 2, 3, 4, 5, 6, 15, 16, 17, 18, 19, 20 and 21 in plaintiffs' complaint.

[fol. 351b]

III

Interveners, in answer to Paragraph 7 in plaintiffs' complaint, allege they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein.

IV

Interveners, in answer to Paragraphs 8, 10, 11, 12, 13 and 14 in plaintiffs' complaint, admit that the said defendants mentioned in said paragraphs are corporations as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

V

Interveners, in answer to Paragraph 22 in plaintiffs' complaint, deny the allegations of the first, sixth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sentences therein; and allege that they are without knowledge or information sufficint to form a belief as to the truth of the averments set forth in the remaining sentences therein.

VI

Interveners, in answer to Paragraph 23 in plaintiffs' complaint, deny each and every allegation therein.

VII

Interveners, in answer to Paragraph 3 in plaintiffs' amended complaint, deny each and every allegation therein.

VIII

Further answering, interveners say:

1. That the assailed order of the Interstate Commerce Commission is not the character of order which this Court [fol. 352] is authorized to enjoin or set aside, and this Court lacks jurisdiction to enjoin or set aside said order.

2. That this Court has no jurisdiction to enjoin the carriers made defendants herein by the plaintiffs, or any one of said carriers, from making effective or enforcing any change or changes in their schedules of rates and charges for the transportation of persons or property by rail in interstate commerce.

3. That plaintiffs do not have the interest or standing requisite to enable them, or any of them, to bring and maintain this suit.

4. That the amended complaint fails to state any cause of action or valid claim against the parties made defendants by plaintiffs, or any of said defendants, upon which the relief prayed for can be granted by this Court.

5. That in the proceeding before the Interstate Commerce Commission, in which the order herein assailed was entered, plaintiffs were accorded the full hearing provided for in and by the Interstate Commerce Act; that at the hearing or hearings on the issues before the Interstate Commerce Commission a large volume of testimony and other evidence was submitted by plaintiffs and others to the Interstate Commerce Commission for consideration; that in briefs filed in said proceeding and in oral argument questions relating to said issues were fully argued in behalf of the parties by their respective counsel and were submitted to the Interstate Commerce Commission for determination; that the Interstate Commerce Commission determined the questions relating to said issues and entered its order here sought to be enjoined and set aside; that the evidence before the Interstate Commerce Commission supports the said order; and that in entering the said order the Inter-

state Commerce Commission exercised the jurisdiction and power conferred upon it by the Interstate Commerce Act in a just and lawful manner.

[fol. 353] Wherefore, having fully answered, interveners pray that the relief sought by the amended complaint be denied and that the amended complaint be dismissed.

The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, by A. B. Enoch, Their Attorney.

Address Room 1025, La Salle St. Station, Chicago.

[fols. 354-358] State of Illinois,
County of Cook, ss:

A. B. Enoch, being first duly sworn, deposes and says that he is the attorney representing the parties designated as interveners in the above-entitled cause and makes this affidavit in their behalf; that he has read the foregoing petition of intervention and knows the contents thereof; that the same is true to the best of his knowledge and belief.

A. B. Enoch.

Subscribed and sworn to before me this 2nd day of January, A. D. 1942. —— ——, Notary Public.

[fols. 359-360] In District Court of the United States

Civil Action File No. 3714

[Title omitted]

Order—January 16, 1942

This cause was heard on plaintiffs' motion for an order dropping Robert E. Woodruff and John A. Hadden, Trus-

tees, as parties defendant and directing plaintiffs to summon Erie Railroad Company as an additional defendant herein, the affected parties having stipulated thereto, and the court being fully advised in the premises,

It is Ordered that Robert E. Woodruff and John A. Hadden, Trustees, be dropped as parties defendant and that plaintiffs be, and they are hereby, directed to summon Erie Railroad Company as an additional defendant in this action and to serve as amended complaint.

Charles E. Woodward, United States District Judge.

Dated: January 16th, 1942.

[fols. 361-362] In District Court of the United States

Civil Action File No. 3725

Civil Action File No. 3714

Order—February 6, 1942

These causes were heard on motion to consolidate them, and it appearing that the above-entitled actions involve common questions of law and of fact and that the consolidation thereof will tend to reduce unnecessary expense and delay, and the court being fully advised,

It is Ordered that the above-entitled actions be, and they are hereby, consolidated.

Evan A. Evans, U. S. Circuit Judge. Charles E. Woodward, U. S. District Judge. William H. Holly, U. S. District Judge.

February 6, 1942.

[fols. 363-364] In District Court of the United States

No. 3725, No. 3714 Consolidated

[Title omitted]

Order—Febraury 6, 1942

On motion of the United States Secretary of Agriculture it is

Ordered that leave be and the same is hereby given to file intervening petition and Ordered that Proposed complaints be made a part of Record.

[fols. 365-366] IN DISTRICT COURT OF THE UNITED STATES

No. 3725, No. 3714 Consolidated

[Title omitted]

ORDER—February 6, 1942

On motion of the Attorney General it is

Ordered that leave be and the same is hereby given to file his answer in the above entitled cause.

[fols. 367-372] IN DISTRICT COURT OF THE UNITED STATES

No. 3725, No. 3714 Consolidated

[Title omitted]

ORDER—February 6, 1942

On motion of attorneys The Alton Railroad Company, it is

Ordered that leave be and the same is hereby given to file reply brief.

[fol. 373] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. I. & S. 4718

Grain Proportionals Ex-Barge to Official Territory

Morrison Hotel,
Chicago, Illinois,
Tuesday, December 19, 1939.

Met, pursuant to notice, at 10:00 o'clock A. M.

Before R. G. Taylor, Examiner

APPEARANCES:

George Dyche, Leo P. Day and F. H. Cole, Jr., 1315 Union Central Building, Cincinnati, Ohio, appearing for respondents.

Nuel D. Belnap, John S. Burchmore and Robert N. Burchmore, 2106 Field Building, Chicago, appearing for Continental Grain Company, Stratton Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, Norris Grain Company, Edward R. Bacon Grain Co., Cargill, Incorporated, and B. A. Eckhart Milling Co., protestants.

David F. Root, Morris, Illinois, appearing for Co-operative Allied Grain Corporation, Morris, Illinois, protestant.

C. E. Childe, 924 W. O. W. Building, Omaha, Nebraska, appearing for Mississippi Valley Association, protestant.

G. W. Baxter, 608 South Dearborn Street, Chicago, ap-
[fol. 374] pearing for Illinois Agricultural Association, protestant.

W. G. Oliphant, and Nuel D. Belnap, 2106 Field Building, Chicago, Illinois, appearing for Inland Waterways Corporation, operating the Federal Barge Lines, protestants.

Charles S. Macaulay, 1534 North Dearborn St., Chicago, Ill., appearing for Finnegan Grain Corporation, Morris, Illinois, protestant.

A. B. Enoch, Chicago, Illinois, appearing for Western Carriers (In support of proposals).

Fred C. Furry, 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad (In Support of proposals.)

J. E. Flansburg, General Commerce Agent, 400 West Madison Street, Chicago, Illinois, appearing for Chicago & North Western Railway Co., (Charles M. Thomson, Trustee.) (In support of proposals.)

R. M. Hegberg, 80 East Jackson Boulevard, Chicago, Illinois, appearing for A. T. & S. F. Ry. Co. (In support of proposals.)

Henry Christianson, 547 West Jackson Boulevard, Chicago, for the Chicago, Burlington & Quincy Railroad Company, (in support of proposals.)

W. H. Blair, Peoria, Illinois, appearing for Toledo, Peoria & Western Railroad, (in support of proposals).

F. W. Maronn, Commerce Assistant, 765 Union Station, Chicago, appearing for Chicago, Milwaukee, St. Paul &
[fol. 375] Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees). (In support of proposals.)

Bernard L. Glover, 411 Fairfax Building, 101 West 11th

Street, Kansas City, Missouri, appearing for the W. J. Small Company. (In support of proposals.)

J. S. Brown, and S. H. Benson, 671 Board of Trade, Chicago, Illinois, appearing for Board of Trade of the City of Chicago.

Freeman Bradford, 623 Board of Trade Building, Indianapolis, Indiana, appearing for Indianapolis Board of Trade.

Arthur L. Schier, 250 Park Avenue, New York City, appearing for General Foods Corporation, Corn Mill Division, Kankakee, Illinois.

W. V. Wheat, Peoria, Illinois, appearing for Peoria Board of Trade.

William T. McArthur, 1212 Board of Trade Building, Kansas City, Missouri, appearing for The Kansas-Missouri River Mills.

Edwin T. Breen, First Assistant Attorney General of Illinois, and Ben Schwartz, Assistant Attorney General, on behalf of John E. Cassidy, Attorney General of the State of Illinois, all appearing as observers.

E. B. Smith, and Y. H. Sparrow, room 1900, 208 South LaSalle Street, Chicago, Illinois, appearing for General Mills, Incorporated.

[fols. 376-377] C. L. Bruno, Decatur, Illinois, appearing for Spencer Kellog & Sons, Inc.

George R. Watson, 600 Roanoke Building, Minneapolis, Minnesota, appearing for Archer Daniels Midland Co.

T. C. Burwell, Decatur, Illinois, appearing for A. E. Staley Manufacturing Co.

H. H. Heftes, 141 West Jackson Boulevard, appearing for Rosenbaum Brothers.

M. Joseph Kaufman, 141 West Jackson Boulevard, Chicago, appearing for Santa Fe Elevator Corporation.

John J. Coffman, Jr., 135 South LaSalle Street, Chicago, Illinois, appearing for Cargill Incorporated.

R. L. Holmes, 309 West Jackson Boulevard, Chicago, Illinois, appearing for Standard Milling Co.

J. J. Schimmel, 332 South LaSalle Street, Chicago, Illinois, appearing for Continental Grain Co.

L. W. Cole, 1463 Railway Exchange Building, St. Louis, Missouri, appearing for Wabash Railway Co.

W. R. McDonald, 160 North LaSalle Street, Chicago, Illinois, appearing for Illinois Commerce Commission.

[fol. 378] Proceedings

Exam. Taylor: Come to order, gentlemen. The Interstate Commerce Commission has set for hearing at this time and place Investigation & Suspension Docket No. 4718, Grain Proportionals Ex-barge to Official territory.

Who appears for respondents?

Mr. Cole: Mr. George Dyche, Leo P. Day and F. H. Cole, Jr. They are all present here.

Exam. Taylor: For protestants?

Mr. Belnap: Nuel D. Belnap for the Continental Grain Company, Stratton Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, Morris Grain Company, Edward R. Bacon Grain Co., Cargill, Incorporated, and B. A. Eckhart Milling Co., protestants.

Mr. Root: David F. Root, for Co-operative Allied Grain Dealers Corporation.

Mr. Childe: C. E. Childe for the Mississippi Valley Association.

Mr. Baxter: G. W. Baxter, Illinois Agricultural Association.

Mr. Oliphant: Nuel D. Belnap and W. G. Oliphant, appearing for the Inland Waterways Corporation operating the Federal Barge Lines; 2106 Field Building, Chicago, Illinois.

Mr. McCaulay: Charles S. Macaulay, appearing for Finnegan Grain Corporation of Morris, Illinois. And may [fol. 379] I enter the tentative appearance of an attorney who is unable to be here but who will attend the other sessions. Mr. Thomas Dunne of Morris, Illinois.

Exam. Taylor: Show Mr. Dunne is not present. Are those all the appearances for respondents? (No response.) We will have the carriers in support of the proposals.

Mr. Enoch: A. B. Enoch, for the Western Carriers.

Mr. Furry: Fred C. Furry, for the Illinois Central Railroad.

Mr. Flansburg: J. E. Flansburg for the Chicago & North Western Railway.

Mr. Hegberg: R. M. Hegberg, A. T. & S. F. Railway.

Mr. Christianson: Henry Christianson, 547 West Jackson Boulevard, Chicago for the Chicago, Burlington & Quincy Railroad Company.

Mr. Blair: W. H. Blair, Toledo, Peoria & Western Railroad.

Mr. Maronn: F. W. Maronn, 765 Union Station, Chicago, for the Chicago, Wilwaukee, St. Paul & Pacific, Trustees.

Exam. Taylor: Is that all the appearances for carriers in support of the proposals? (No response.) Now, the parties in favor of the proposals, other parties.

Mr. Glover: As I understand, the proposals don't affect our rates by the changes proposed, so we are kind of neutral in the matter as we understand it.

[fol. 380] Mr. Brown: J. S. Brown and S. H. Benson, for Chicago Board of Trade.

Mr. Bradford: Freeman Bradford, for the Indianapolis Board of Trade.

Mr. Schier: Arthur L. Schier, General Foods Corporation—Corn Mill Division, Kankakee, Illinois.

Mr. Wheat: W. V. Wheat, Peoria Board of Trade, Peoria, Illinois.

Mr. McArthur: William T. McArthur, Kansas-Missouri River Mills, Kansas City, Missouri.

Exam. Taylor: Is that all the appearances for parties other than carriers in favor of the proposal? (No response.)

Mr. McDonald: F. B. McElroy, Illinois Commerce Commission.

Exam. Taylor: Mr. McElroy not present. His appearance was entered for him. Respondents may call their first witness.

Off the record.

(Discussion outside the record.)

(Exhibits 1 to 12, Witness Tannehill, marked for identification.)

W. T. Tannehill, was sworn and testified as follows:

Direct examination.

By Mr. Cole:

Q. Mr. Tannehill, you have been sworn?

A. Yes, sir.

Q. Will you please give your name to the reporter?

[fol. 381] A. W. T. Tannehill.

Q. Will you please state your connections and whom you represent here?

A. Member of the Auxiliary Committee of the Central Freight Association; here representing the respondent carriers.

Q. Will you please give your traffic connections and your qualifications?

A. I have been in railroad work since 1936; operating in traffic. 31 years with the New York Central System, in the operating traffic department of various capacities, including general freight agency at Chicago; chief tariff bureau; assistant to the traffic manager at New York. I have been in my present location since March 1, 1937.

Q. Have you made a study of the issues involved in connection with this I. & S. Docket 4718?

A. I have.

Q. And have you prepared or has there been prepared under your direct supervision and control a set of exhibits which we have already distributed, numbered 1 to 12, inclusive?

A. That is correct.

Q. Do these exhibits set forth the facts as you have checked them and are they true and correct to the best of your knowledge and belief?

A. Yes, sir.

Q. Have you prepared in connection with your exhibits a [fol. 382] statement showing the position of the respondents in connection with this proposed tariff change?

A. Yes.

Q. Will you please proceed to explain this situation to the Commission, please?

A. This proceedings involves a desire of the rail carriers operating in and from Illinois to restrict the application of proportional or reshipping rates on grain, grain products, and so forth, so as to be non-applicable to traffic moving into Chicago or other points, via barge, for various reasons among which are: the loss of tonnage to the rail carriers; the serious disturbance the present situation is having upon the grain rate structure in the territory generally; the discrimination and undue prejudice and preference as against rail shippers of grain in the origin territory in Illinois.

Exhibit No. 1 consists of 27 pages and I would like to make a correction in each one of the exhibits distributed. Page 18½ was inserted. Page 18½ follows the first block on Page 19. It is a chronological application of the note

which became effective January 15, 1924, that was left out of the original.

This exhibit is a chronological statement showing the various applications of the proportional rates from Chicago, and so forth, to Central Freight Association territory, Trunk Line and New England Freight Association terri-
[fol. 383] tories from the year 1910 to date. In the early days, starting with 1910, the rules were published in individual tariffs. We did not try to reproduce all of the tariffs and we have shown the tariffs of the L. S. & M. S. Railroad, now the New York Central, because they were available and handy to get at. That is the only reason for showing those particular tariffs. But the other tariffs were published in a like manner.

There is one other correction—well, one correction that has been made on Page 6 of the exhibit. In the second block, there is a line drawn through eight words there, and I simply explain that we had these photostated and there is not a copy of the particular item that we could use to cut up for this photostat, and therefore drew the line through the words that have been deleted, thus making it the same as it was on June 28, 1935.

The first nine pages of Exhibit 1 involve the application of the rates as affecting Central Freight Association territory. The balance of the exhibit involves the application of the rates to Trunk Line and New England territory. On Page 14 of the exhibit, under note 25, attention is called that his note 25 is not applicable at Chicago, but only from upper Mississippi River crossings, St. Louis, East St. Louis and Peoria. And Page 16, Note- 30 and 35, have application only via the Peoria and Pekin gateways. A similar note should be provided on Page 20 in connection with Notes 25, 35 and 40.

[fol. 384] Q. Mr. Tannehill, will you please explain Note 17—Note 40, Page 17.

A. Note 40 on Page 17 has application at Peoria.

Exhibit No. 2 is a photostatic copy of the present and suspended notes in Agent Jones' Tariff 535-A, ICC 3300; the first six and a half pages being the notes as are applicable today. The balance of the exhibit covers the suspended notes.

Exhibit No. 3 is a map showing the territory in Illinois and Northwestern Indiana, which is outlined in a heavy

black line as representing the territory from which reduced rates on corn, carloads, were published to Chicago to meet water and truck-water competition.

Exhibit No. 4 is a companion to Exhibit No. 3 and shows the origins within the heavy black circle of Exhibit 3, and sets forth the intrastate rates on corn, carloads, published to meet water and truck-water competition to Chicago as compared with the normal local rates on grain, including corn, from the same origins to Chicago. The reduced rates from these origin points are applicable only on Illinois state traffic, except those rates on Page 3 for account of the EJ&E, and on Page 4, for account of the New York Central System, which rates are interstate—for interstate application, because the routes of those lines to Chicago operate through Indiana and the application of their rates necessarily is interstate. But on these lower rates by interstate route, transit is not permitted under the reduced [fol. 385] rates.

Exhibit No. 5 is a two-page statement showing the present total charge on grain, barge-rail from La Salle, Morris, Ottawa and Seneca, Illinois using the rail proportional rate out of Chicago to Baltimore, Maryland; New York, New York; and Boston, Massachusetts. Those figures are shown in the first block of the exhibit and cover both domestic and export grain.

In the succeeding blocks, as an example, using the domestic rate to Baltimore, the barge-rail total charged today is 27⅛ cents, as compared to 35 cents all-rail from La Salle, 32½ from Morris, 33 from Ottawa and 32½ from Seneca. The local rate from Chicago to Baltimore is 31½ cents and is higher than the combination of the barge rate to Chicago and the proportional rate east thereof, and we also show in that exhibit the mileage from River ports of La Salle, Morris, Ottawa and Seneca, together with the mileage from the points, for example, on the B. & O. Railroad of Avilla, Indiana, where the local rate on grain to Baltimore meets the barge-rail charge from La Salle, Ottawa, Morris and Seneca.

The succeeding blocks on that exhibit cover the Erie Railroad and the Grand Trunk and Michigan Central; second page, other roads as explained.

On Exhibit No. 6, the companion to Exhibit 5——

Q. Mr. Tannehill, pardon me just a minute. Will you explain, please, the asterisks that show on Exhibit No. 5?

[fol. 386] A. The asterisks that are shown opposite certain rates on Exhibit No. 5 are the points where the local rate from the Indiana or Ohio origins to Baltimore or New York or Boston become equal to the barge-rail charge from the Illinois River landings, La Salle, Morris, Ottawa and Seneca. In other words, the barge-rail charge from these four points is lower than the rates published for all-rail application from the Indiana origin as shown, and on the domestic, as stated, it runs out of Avilla, Indiana, on the B. & O. and on domestic traffic. On export traffic other than the coarse grains, it runs out of Hicksville, Ohio and on the coarse grains including corn for export, it doesn't run out until it reaches Lordstown, 393 miles from Baltimore.

Q. While you are still on that exhibit, Mr. Tannehill, will you note over on the left side of the page at the top, there is shown two columns under the word "Miles." That first column headed "All Rail," is that the short-line rail distance?

A. That is the short-line class rate distance.

Q. And the second column with the (1) inside, what does that distance represent?

A. That distance represents the distance via Chicago, using the barge line mileage to Chicago. We used Federal Barge Line Circular 9-H, ICC 82—Illinois Waterway Navigation Chart published by the U. S. Engineering Office at Chicago.

By Exam. Taylor:

Q. And then beyond Chicago, you used——

[fol. 387] A. Beyond Chicago, we used the short-line class rate distance.

Exhibit No. 6 is a companion to Exhibit No. 5 and shows on that map where the local rates from country origins in Indiana, Michigan, Ohio, become not higher than the barge-rail charge from the Illinois River landings, Morris, Ottawa, Seneca, and La Salle. The first line is where the domestic rates become equal. The second line—the broken line following the Indiana-Ohio state line and running out just north of Port Huron, Michigan, is the export rates other than the coarse grains; and the chain line over near the Ohio-Pennsylvania state line is where the coarse grain,

including corn, meet the charge of the barge-rail movement from the Illinois River landings.

Exhibit No. 7 is a three-page exhibit using Toledo, Ohio and New York, New York, as examples as destinations, and Minneapolis, Minnesota, as representing Northwest territory; Kansas City, Missouri, as representing Trans-Mississippi territory as origins, and shows the chronological history of rates from March 15, 1910, to date, applicable from the Northwest via Chicago and Peoria, Illinois gateways, and from Kansas City via Chicago, Peoria and St. Louis gateways. This exhibit is presented to show that the proportional or reshipping rates from Chicago on grain have always been equalized via the other gateways, Peoria and St. Louis; St. Louis, of course, not being equalized from the Northwest. This is not alone because of railroad [fol. 388] competition, but also because of market competition, the only exception to this continued equalization being in certain instances where for a short time following straight percentage increases in rates, they were out of alignment. And following general order 28, which was the 25 per cent case, due to the fact that the railroads were under Federal control, the adjustment equalizing the gateways was not made until November 22, 1920.

The history of these rates has been discussed in several of the Commission's reports, including the third report of the Commission in the Southwestern Millers' League case, Docket 15037, 225 ICC 195, at Page 208, and there being no through rates on grain from the Northwest or Trans-Mississippi River territory these proportional rates on grain served as the Eastern roads' factors representing the through charge and were published to equalize the St. Louis, Peoria and Chicago gateways and markets, and there was no intention on the part of the carriers east of Chicago when this basis of rates was worked out that they apply on traffic reaching Chicago or other gateways by barge. It is true that certain of the proportional rates were made applicable on grain arriving at Chicago from Duluth and upper lake ports via the Great Lakes where the traffic had had a previous rail haul to the ports.

By Mr. Cole:

Q. Mr. Taylor, I notice that at the heading of this exhibit, you say that this is the rate history on wheat to show this

[fol. 389] equalization. Was wheat shown merely as illustrative?

A. Wheat was shown merely as illustrative.

Q. The same equalization would prevail, then, on all of the various grains?

A. On all of the grains, yes.

Exhibit No. 8 is a companion exhibit to Exhibit No. 7, showing how this equalization also works out from the country origin of the grain to the final destination. For Northwest territory in this exhibit we have used Andover, South Dakota and Duane, North Dakota. It will be noted that these rates equalize via both Chicago and Peoria, and in this exhibit we are using the rates as of today.

By Exam. Taylor:

Q. Included in the Ex Parte 123?

A. Yes, sir. And from the Trans-Mississippi territory we have used Harrison, Nebraska and Concordia, Kansas. Here it will be noted that the rates are also equalized.

Exhibit No. 9 is a four-page statement showing the all-rail rates on grain from La Salle, Ottawa, Morris and Seneca, Illinois to representative destinations in Central Freight Association territory, also to Baltimore, New York and Boston, compared with the barge-rail charges, which shows the level of the all-rail rates from these origins, LaSalle, Morris, Seneca and Ottawa to the destinations shown compared with the sum of the barge rates into Chi- [fol. 390] cago from the same origins, plus the proportional rate from Chicago to these same destinations, showing that the barge rate, plus the proportional rate, would give total charges ranging as much as 8 cents lower than the all-rail rate.

Exhibit No. 10 shows the various proportional or reshipping rates from Chicago and the local rates from Chicago to Central Freight Association destinations and their application. This exhibit, in so far as the application of the notes referred to are concerned, will be coupled with Exhibit No. 2. In other words, where we say under "Trans-Mississippi River (see Notes 20 and 50)" and under "North-West (see Note 40)", and "Reshipping (see Note 45)", those are all explained in Exhibit 2.

Exhibit No. 11 is a one-page statement showing the short-line distance and present local rates on grain, car-

loads, the present published sixth and first class rates and the percentage relationship the local grain rate is of the first class, Chicago to Central Freight Association, Trunk Line and New England destinations shown, also comparison of these rates with the Western and Southwestern scales for similar distances and the relationship of rates under the Western and Southwestern scale with the Appendix E Docket 15879 first class rate for the distance.

Exhibit No. 12 is a four-page statement prepared by the Ceneral Inspection and Weighing Bureau showing the [fol. 391] origin points of 792 cars of corn moving into Chicago from the territory covered by Exhibits Nos. 3 and 4 at the low water-compelled or truck-and-water-compelled rates, during the period May 1 to November 30, 1939, which were accorded milling in transit privileges and the product of this corn reforwarded to destinations east of Chicago via rail. The column headed "Local State Rate" represents the water-compelled or truck-water-compelled rate on which the traffic moved into Chicago and the next column headed "Normal Rate" represents the rate which had to be protected to Chicago when the traffic moved out of Chicago by rail. In the last column there is shown the number of cars from each of these origins.

Mr. Cole: I would like to offer in evidence at this time Exhibits 1 to 12, inclusive.

Exam. Taylor: They will be received.

(Exhibits 1 to 12, Witness Tannehill, received in evidence.)

Mr. Cole: That is the end of the direct.

Exam. Taylor: Any questions by counsel for carriers in support of the proposed rates?

Mr. Enoch: Yes, if your Honor please.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Tannehill, several times in your direct testimony and on one or more of your exhibits, reference was and is made to a barge rate. What did you have in mind when you referred to "barge rate"?

A. I had in mind the charges as given to us by a represen- [fol. 392] tative of the Chicago Board of Trade as the

charges of the barge lines to bring that grain traffic to Chicago.

Q. Were you able to find what you designate as a rate in any published document?

A. Oh, no, we had no other way of getting it than the manner I tell you.

Q. Do you mean Mr. Brown?

A. Mr. Brown.

Q. Did you get any of these figures which you have referred to as rates from any so-called manifests?

A. Yes, one or two.

Q. Do you know whether or not that figure is, in reality, simply a computation made by the shipper purporting to represent the cost of transportation?

A. I don't.

Q. When you use the word "barge rate," you don't refer to a rate such as we generally refer to in this, speaking about the all-rail rate from Chicago to Kansas City or Kansas City to New York?

A. I think, Mr. Enoch, that in all instances, if I referred to it as barget rate it should have been referred to as barge charge.

Q. And you have no way of verifying the accuracy of the computation of cost, if that is a computation of cost, have you?

A. Not that I know of.

[fol. 393] Q. And if it were a rate, you would have no way to verify whether or not it was a rate?

A. To the best of my knowledge, it is not published in any publication on file.

By Exam. Taylor:

Q. On file with the Interstate Commerce Commission?

A. Or state commission or anywhere else.

By Mr. Enoch:

Q. With anybody?

A. With anyone that I know of.

Q. Where do the Eastern lines accept these shipments of corn for transportation eastbound? Where in the Chicago switching district?

A. Well from the grain house.

Q. You mean the grain elevator?

A. Yes, sir.

Q. Are these shipments of corn all loaded at South Chicago out of those elevators out there?

A. I don't know what elevators they are loaded out of. I have no personal knowledge of what elevators they are loaded out of.

Q. All of the grain that is placed in the cars here in the Chicago district for transportation eastbound and which were permitted to engage these proportional rates out of Chicago was in storage in Chicago just before eastbound transportation by rail, was it not?

The Witness: Miss Reporter, would you please read the [fol. 394] question?

(Question read.)

The Witness: Well, the grain that was tranported east from Chicago was in Chicago, naturally, when it was loaded in the cars.

By Mr. Enoch:

Q. And loaded out of an elevator?

A. Loaded out of an elevator, or if it was a product, loaded out of a milling concern.

Q. What I wanted to make clear was this, Mr. Tannehill, that there was no—speaking of the facts and not of the fiction, now—that there was no continuity of movement, as far as you know, from these origin points, say Morris, Illinois, direct to New York, barge to Chicago and rail to New York?

A. What you mean, was it loaded direct from barge to cars?

Q. Yes.

A. I wouldn't know. Presumably, it all went through the elevators. How long it was there, of course I couldn't say.

Q. If all of it did go into the elevator in order—if it were otherwise proper to apply those proportional rates eastbound, there must have been some tariff provision permitting storage in transit or some other service of that nature in order to preserve this continuity of movement. Where in the tariffs of the Eastern lines would I find a provision which, as I say, if it were otherwise lawful, would permit this grain to accept storage at Chicago, hav- [fol. 395] ing some in ex-barge and moved out all-rail?

A. As shown in my Exhibits 1 and 2.

Q. What exhibits?

A. 1 and 2.

Q. 1 and 2?

A. Yes.

Q. Did you refer to any transit tariff there?

A. Well, of course the transit tariff applicable at Chicago for account of all lines is the Agent Jones' Tariff 413. I can't give you the ICC number.

Q. That is all right.

A. But so far as the application which I thought you had reference to, they are carried in Exhibits 1 and 2.

Q. Now, if the Commission should find that there is required a tariff provision authorizing storage in transit at Chicago, they would only find it or anyone would only find it in this Jones' Tariff, to which you just made reference?

A. Well, as far as I know, there is no other; so far as the rail carriers, and that its the only one I have had any——

Q. I am talking about the rail carriers; that is the only one I had in mind. I am right about that, am I? If I am looking for such provision, I would find it, if at all, in the Jones' tariff?

A. That is the tariff providing for the storage and the transit privileges on grain and grain products and various [fol. 396] other commodities in the Chicago district.

Q. I notice in your Exhibit No. 1 and 2 reference is made to Northwest territory, Trans-Mississippi territory and other similar descriptions for origin territory. Are the proportional rates from Chicago to the East which are applicable on grain from Northwest territory and Trans-Mississippi territory at the same level?

A. Not always. They are to Trunk Line and New England. They are not to Central territory where we recently got—complied with the Commission's decision in Docket 15037. We endeavored in the Southwest Millers' case to make them the same on all grain east of Chicago to CFA territory, but were not permitted to do so.

Q. What rate have the Eastern lines in applying on this corn from Morris, Illinois, ex-barge going to points in Central Freight Association territory, the ex-Northwest proportional or the Trans-Mississippi proportional?

A. Well, now, what rate they have been applying, I couldn't say. I have not applied any of the rates. The rules involving the application of those rates are as shown in Exhibits 1 and 2, and it has been interpreted that the

Northwest rate would apply to this water-borne traffic to Chicago.

Q. Where it is lower?

A. Where it is lower?

Q. Yes.

[fol. 397] A. Lower than what?

Q. Lower than the rate on Trans-Mississippi business to the same point.

A. No. No, sir.

Mr. Belnap: May I have the last question and answer here?

(Record read.)

Mr. Belnap: Clear up that last portion. I don't think the record is clear as to what the fact is.

The Witness: The answer is that the Northwest reshipping rate has been interpreted to apply in all instances.

By Mr. Enoch:

Q. Mr. Tannehill, will you identify a point in CFA territory to which, from Chicago, the proportional rate, ex-Northwest is lower than the proportional from Trans-Mississippi territory?

A. I seriously doubt if there is any unless they are in—yes, the Northwest had one at Cadillac, Michigan, 17 cents: and 17 Trans-Mississippi. That is no different.

Mr. Belnap: I can't hear the witness, Mr. Examiner.

Exam. Taylor: Will you talk a little louder, please?

By Mr. Belnap:

Q. What exhibit are you on?

A. I am not on any exhibit. The gentleman asked me if I could identify a rate from Trans-Mississippi higher than from the Northwest, and I am endeavoring to find one. Just for my own edification, I am using Exhibit 10.

Exam. Taylor: Does that clear that up, Mr. Enoch?

[fol. 398] Mr. Enoch: Pardon me?

Exam. Taylor: Does it clear that up for you?

Mr. Enoch: I didn't hear that.

Exam. Taylor: Does that answer your question?

Mr. Enoch: No, he is looking for a point——

The Witness: There are none shown on this exhibit where the Northwest is lower than Trans-Mississippi, and I have none in mind.

Mr. Enoch: That is all.

The Witness: I might explain that all of our Trans-Mississippi rates and our Northwest rates to CFA territory were set by the Interstate Commerce Commission in Docket 15037.

Exam. Taylor: Do you want to ask him some questions?

Mr. Cole: Off the record.

(Discussion outside the record.)

Exam. Taylor: Go ahead, Mr. Cole.

By Mr. Cole:

Q. Mr. Tannehill, will you look at your Exhibit No. 6, please. In the Docket 15037 case, do you remember that there was an exhibit introduced in that case upon which the rates were finally based with a line of equidistant points beginning at South of Chicago and running in a southeasterly direction east from that beginning point, and that there was a line drawn up above there including the very southernmost portion of the southern peninsula of Michigan, and that in the equalization of the rates from the [fol. 399] Northwest and from the Southwest, the Commission made the rates equalized through, for the through distance between these two lines; and that north of that line in the southern peninsula of Michigan, the rates were made lower ex-Northwest because of the closeness of that Northwest territory. Do you remember that exhibit?

A. Well, I remember that was the situation. I don't remember the exhibit.

Q. But the decision that you refer to will bring that out by reference to that line in southern Michigan to which territory south of that line, the rates were equalized from both of the origins, will it not?

A. I think so.

Q. Now, in the first part of Mr. Enoch's questioning, he referred to the barge charge. The figures that you have used throughout your exhibits as representing the barge charge, does that represent an average of those charges that you refer to. Does it represent the lowest barge charge

you referred to or does it represent the highest barge charge you learned of?

A. That was the figure that was given us by the Chicago Board of Trade as the charge that was being assessed. It had no average. That was the only figure that we secured.

Mr. Cole: That is all. Thank you.

Mr. Brown: Mr. Tannehill——

Exam. Taylor: Just a minute, Mr. Brown. I want to see if the carriers in support of the proposals have any fur-
[fol. 400] ther questions.

Mr. Enoch: I have none.

Exam. Taylor: All right, Mr. Brown.

By Mr. Brown:

Q. Mr. Tannehill, do you recall whether it was stated that this four and a half cent per one hundred alleged barge charge at Chicago was made up of two factors which were taken from the protests of the petitions of some of the protestants?

A. I do not, Mr. Brown. I simply used a figure that I got from you by telephone at that time. There were——

Exam. Taylor: A little louder, please, Mr. Tannehill.

The Witness: I said I do not recal- that that was the case. I simply used a figure that you gave me on the telephone as the basis for these charges.

By Mr. Brown:

Q. You don't recall now that I said that it included what was said to be a 1 cent per 100 pounds for elevation from barge to elevator at Chicago?

A. No, I do not. There was, I think, in one protest that was filed against these corrections in the tariff, there was some statement made but I do not remember what it was and whether it was against the tariff that was withdrawn or the one that is now under suspension; I don't recall.

By Mr. Day:

Q. Well, Mr. Tannehill, you have seen the manifests—if you will pardon me, Mr. Brown.

Mr. Brown: Yes, surely.

[fol. 401] By Mr. Day:

Q. You have seen the manifests on some of this grain and you know the charge shown there is 1.4 cents and 1.5 cents per bushel on some of it?

A. Some of it.

Q. That would be the equivalent of 2½ cents per 100 pounds, wouldn't it?

A. Yes, as far as that charge is concerned.

Q. There are 56 pounds to the bushel, grain is considered.

A. What we used here was simply the figure that Mr. Brown gave us.

Mr. Brown: Are you through, Mr. Day?

Mr. Day: Yes, Mr. Brown.

By Mr. Brown:

Q. Do you understand, Mr. Tannehill, that these barge bills of lading or receipts or whatever you may call them must be registered with the joint inspection bureau at Chicago that has jurisdiction over the transit operations and that that requirement is required under this Jones' tariff 413-K which you referred to?

A. Yes.

Q. For the record, I will give the ICC reference. It is ICC No. 3204, issued by B. T. Jones, Agent, for account of all railroads in the Chicago district.

Mr. Tannehill, would or would not these barge bills of lading that are registered with the bureau show whether or not there was a rate on there for the towing from these river [fol. 402] points downstate to Chicago?

A. I would think they would. Now, you are talking about a bill of lading. I don't know of any bill of lading that has been tendered to the Inspection Bureau. There might have been an outbound bill of lading but on the inbound, I think you are talking about the barge manifests.

Q. Would the barge manifests be representative of the inbound movement just like a railroad freight bill is representative of the inbound movement of the car?

A. I couldn't say whether it would be representative or not.

Q. Does it serve the same purpose?

A. It serves the same purpose for the Inspection Bureau.

Q. Are those available?

A. They are available, I presume, in the Inspection Bureau. I don't know just the workings of the Inspection Bureau. I saw one or two over there, but I would think they would be available.

Q. Is this Bureau under the supervision of the Central Freight Association?

A. Yes, sir, and at Chicago also under the supervision also of the western roads, because we have the one Bureau on the grain at Chicago.

Mr. Brown: Is there any objection, Mr. Cole, to an examination of some of these bills to see whether or not they show any rate or freight charges? We are talking about these barge manifests. That ought to be cleared up, just [fol. 403] what the towing rate is, if it is shown on the barge manifests. If it is not, of course on one knows what it is except the man who pays it.

Exam. Taylor: Can you answer that question, Mr. Cole? That question was addressed to you.

Mr. Cole: Was it?

Mr. Brown: Yes, sir. I asked you if you had any objection.

Mr. Cole: Pardon me, Mr. Brown. I was talking to Mr. Day about another point. I thought you were asking the witness.

Mr. Brown: No, I asked you if there was any objection on the part of the eastern respondents to making the examination of these barge manifests that are on file with the Inspection Bureau to determine whether or not there is any rate charged on those barge manifests for towing, the charge for towing or any other charge, or whether there is any rate at all on that.

Mr. Cole: Why, I don't see why we should have any objection to anybody showing any of the facts that they believe are pertinent to our issue that we have here. No, Mr. Brown.

Mr. Brown: The reason I raised that question——

Mr. Cole: But we don't have any manifests here with us and if anybody asks for the privilege of doing it, somebody will have to go over to the Central Weighing and Inspection Bureau, or else we will have to have a man from that Bureau come here, and since the Bureau is under the supervision and direction of the Central Freight Asso-

[fol. 404] ciation, I think it is an easy matter to clear up, unless Mr. Belnap states that his clients will show those barge bills of lading.

Mr. Belnap: We are going to put in, Mr. Brown, what we paid on the shipments transported for our account.

Mr. Brown: That is for the towing?

Mr. Belnap: Transportation; the transportation.

Mr. Cole: Mr. Examiner, perhaps I could clear up Mr. Brown's question satisfactorily to you if we were to agree this way, and if it satisfied everybody, that we could go ahead and proceed with the case now and if Mr. Brown, when he comes to his part of the case desires us to do so, we could probably have that man come over here after having made an investigation of these manifests to give what Mr. Brown wants of him when he comes; and if everybody is agreeable that that be done a little later, we could have that man here at that time. Mr. Brown could let us know a little later during the hearing, at a recess, say.

Exam. Taylor: May I ask, are you going to put a witness on the stand that is conversant with the handling of this grain through the transit operation here at Chicago?

Mr. Cole: Well, the railroads are not. And I think that Mr. Brown, through his activity, knows more about that than anybody in the room. So he would be the man who would be answering that very thing that you have just referred to.

Mr. Brown: I think Mr. Brown will not take the stand [fol. 405] and he will only have a commercial witness, maybe some farmers from downstate, but the eastern railroads have jurisdiction over this transit Bureau. They have access to all the records. They know what kind of barge bills have been recorded for transit. They know what has become of those bills. What I want to know is, do those barge bills show any rate for transportation, that is, for towing, Morris and Ottawa to Chicago. Then we can clear up whether this four and an eighth less one cent is the actual towing charge made.

Exam. Taylor: You said something, I think, Mr. Brown, about the western carriers in support of the tariffs here in issue, whether they were going to put in something, did you not?

Mr. Brown: I suppose, but they——

Exam. Taylor: Along that line?

Mr. Brown: But you see, they don't have anything to do with the transportation up to Chicago by barge. The eastern railroads are the only ones, who, as rail carriers, participate in this barge movement.

Mr. Enoch: If your Honor please, these manifests are absolutely essential to the eastern lines in order that the eastern lines may have some semblance of authority for assessing something less than the local rate out of Chicago.

Exam. Taylor: Well, Mr. Cole——

Mr. Cole: Yes, sir.

[fol. 406] Exam. Taylor: Will you see that that is done, that a man from the Bureau comes over that is conversant with the handling of these inbound manifests and the method of transit, so that we can clear up all these little details? It is vague on the record, the way it stands.

Mr. Cole: All right, but may I ask the Examiner this question: I haven't had an opportunity yet to confer with Mr. Brown, and could we—of course, I am here to comply with your requests as to what you desire on the record, but before you make that request to me definite, so that I can get your meaning, may we have a conference with Mr. Tannehill and Mr. Brown so that we know what to go after, rather than have you ask me to get something that may not even comply with Mr. Brown's questions? May we have that, first.

Exam. Taylor: We will have a short recess shortly, and you can have your conference and then come back and tell us what the result of the conference is.

Mr. Cole: Right now, for the record, I will say I will be glad to get anything Mr. Brown asks us to produce that we have available.

Mr. Brown: It may not be necessary, if the protestants will tell what their towing charges are and if they vary, and so forth, and what they cover.

Mr. Macauley: Mr. Examiner, may I ask that you also bring manifests covering the price paid in to Chicago by [fol. 407] lake carrier vessels arriving from different points. One of our contentions is discrimination against the Illinois River grain in favor of grain arriving by lake carrier vessels, and we would like also to bring in manifests covering lake carrier vessels.

Mr. Brown: That is not in the case.

Exam. Taylor: Is that grain also handled through this same Inspection Bureau?

Mr. Brown: Yes.
Exam. Taylor: It will be available at that time.
Is that all the questions of Mr. Tannehill. Mr. Glover?
Mr. Glover: I want to ask a few questions.

By Mr. Glover:

Q. Mr. Tannehill, in your statement at the start, I understood you to say that the tariffs that are under suspension would not apply on these barge line traffic that is originating on barge lines. Now, I understand that when the tariffs naming the barge line rates are published and filed with the Interstate Commerce Commission, that generally speaking the rates will continue to apply on the barge line traffic?

A. We have made that provision in the suspended issues.

Q. So all traffic from Kansas City via barge line either to East St. Louis or Peoria or Chicago, the proposed rules will not change the application of the present proportional rates on such traffic?

A. That are published by the Federal Barge Line in the items specified in the rules of suspension.

[fol. 408] Q. As I understand, generally speaking, the rates are published by the barge lines and filed with the Interstate Commerce Commission from Kansas City——

Mr. Enoch: What barge line are we talking about? Federal Barge Line?

Mr. Glover: Federal Barge Line, from Peoria, St. Louis and Chicago.

The Witness: There are rates published by the Federal Barge Line on file with the Interstate Commerce Commission, Peoria, St. Louis and Chicago. And those are referred to in the tariff under usspension as being the proportional rates being applicable to that.

By M . Glover:

Q. Now, in your Exhibit No. 2, Page No. 2, under Note 20, suspended note, supplement 7 of Agent Jones' freight tariff ICC 3300, you have this note: "Rates will also apply on shipments moving from Kansas City, Missouri, to Chicago, Illinois, or Peoria, Illinois, under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, ICC No. 148; supplements thereto or successive issues thereof." Now, as I understand, that is the kind of item that you have

provided in the new tariffs under suspension which will permit the present proportional rates, eastbound from the basin point, to apply on traffic via barge line from Kansas City?

A. That is not the kind of an item. That is the item, the one you just read.

[fol. 409] Q. That same item—I read the item applying to Chicago and Peoria, and the same kind of an item reading with St. Louis and so forth, is maintained under other items?

A. That is correct, and refers specifically to Item 3632 of the Federal Barge Line Tariff 31-J.

Q. And the item that, where it states Item 3632 of the Federal Barge Line tariff, that names, as I understand, grain rates and includes alfalfa meal, is that your understanding?

A. I don't know that item offhand, sir. You probably know more about it than I do.

Q. But the rates eastbound from these basin points where you undertook to make some exceptions or limitations on the application do name rates on alfalfa meal as taking grain rates, is that correct?

A. No, sir. In our territory they don't name any rates, alfalfa meal rates taking grain rates.

Q. Do they name rates on alfalfa meal?

A. We have rates on alfalfa meal but they are not grain rates. I am talking about territory east of Chicago.

Q. But the tariffs under suspension do name rates on alfalfa meal?

A. The tariffs under suspension name rates on grain and grain products, as I recall. What is in that grain and grain products, I can't remember.

Mr. Glover: That is all.

[fol. 410] Exam. Taylor: Any further examination of this witness by parties in favor of the proposal? (No response.)

We will recess for five minutes.

(A short recess was taken.)

Exam. Taylor: On the record. Mr. Breen, do you wish to enter an appearance at this time?

Mr. Breen: Yes, sir, if you please. John E. Cassidy, Attorney General of Illinois has asked to intervene in this proceeding, but before doing so, he desires to determine

whether or not the public interest justifies such an intervention, so he is represented by Edwin T. Breen, First Assistant Attorney General and Benjamin Schwartz, Assistant Attorney General, merely for the time being sitting as observers to determine whether or not such public interest exists; and Miss Court Reporter, will you see we get a copy of this proceeding.

Exam. Taylor: Mr. Cassidy is not present.

Mr. Brown: Mr. Examiner, apparently it will not be necessary to consider whether an examination should be made of the barge manifests, because I understand that, from what Mr. Belnap said a while ago, the protestants will tell what transportation charges they have paid.

Exam. Taylor: Is that your understanding of it, Mr. Cole?

Mr. Cole: That is my understanding, that——

Exam. Taylor: Now, if Mr. Belnap's testimony does not fully and adequately cover the subject, will you still be [fol. 411] willing to put a witness on——

Mr. Cole: Absolutely.

Exam. Taylor: From the Inspection Bureau?

Mr. Cole: Absolutely. Any time that either of the parties so desire; if it later becomes necessary.

Mr. Macaulay: Mr. Examiner, in order that we might make progress and not be caught at the end of the hearing without being prepared, if it is not the intention of the CFA to furnish this information as requested by Mr. Brown, I would like to know it so that I might arrange for a subpoena. I would like information regarding the manifests from the lake carrier vessels and from the Federal Barge Lines operating out of Kansas City, as well as whatever manifests they might care to have with reference to the barge traffic from Illinois points, from which reshipping rates are granted. If it is not their intention to bring it in as originally requested, then I want to know it now so that I might arrange to subpoena it in.

Exam. Taylor: Mr. Cole.

Mr. Cole: Mr. Examiner. I think I don't state this as a positive fact, but I think that before the hearing gets very much further along, the information this gentleman requests will be bound to find itself on the record, and it might answer all of his present requirements, and suppose we let it go like Mr. Brown has until he sees whether that information is furnished; and if at the end of the day or [fol. 412] perhaps tomorrow at lunch time, if he is still

concerned, I think that he can get in touch with all of us again.

Mr. Macaulay: I will be glad to stipulate with you as to a specimen form of each one, but I would like to have in the record, irrespective of whatever testimony is offered as to rates, I would like to have in the record the nature of these manifests. And as long as it has been called for and made a point of, I think we should go through with that and unless we are able to get a stipulation as to a form, which we can decree, I am sure, is the form generally used and the statements therein included, then I would like to know now so that I could prepare myself to require the production of it.

Mr. Cole: May I know who this gentleman represents?

Mr. Macaulay: Mr. Macaulay, representing Finnegan Grain Corporation of Morris, Illinois.

Mr. Cole: Well, Mr. Examiner, I am in no position now to stipulate as to the form of any of these things, because, if you will remember, the examination that we just had, neither myself nor the witnesses have examined it, so that I couldn't begin—our witnesses and myself wouldn't know what one of the things looked like if you showed it to us.

Exam. Taylor: It is a transportation paper of some sort or another.

Mr. Cole: But I have never seen one and neither has my witness.

[fol. 413] Mr. Macaulay: What I have in mind, there are undoubtedly thousands in the file. If you could take one of them and agree that that would be a representative form, that would be satisfactory.

Exam. Taylor: That is, of each form of transportation, barge in or lake in or——

Mr. Macaulay: Federal Barge from Kansas City.

Exam. Taylor: Or Federal Barge from Kansas City; either of the three forms. Just hold that, then, and reserve it, if you will.

Mr. Macaulay: Just so I don't get caught short, that is all.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Is there any more examination of the witness Tannehill by parties in support of the suspended schedules? (No response.) Cross-examine.

Mr. Belnap: Mr. Examiner, I ask permission to defer my cross-examination until after the noon recess so that I can run through the exhibits. I think I can shorten it by doing that.

Exam. Taylor: Any objection to that? (No response.) Mr. Tannehill, step aside until after lunch.

(Witness excused.)

Mr. Macaulay: May I have an opportunity to cross-examine?

[fol. 414] Exam. Taylor: I thought we agreed to wait until after lunch.

Mr. Macaulay: Oh, I beg your pardon.

Exam. Taylor: It will be reserved until after lunch, cross-examination.

Next witness: Are the exhibits distributed for the next witness?

Mr. Cole: Perhaps the parties don't realize this is the only witness for the Official territory lines.

Exam. Taylor: Then except for the cross-examination, that concludes your case?

Mr. Cole: For the Official territory lines, it does.

Mr. Belnap: Are we dividing the respondents into two groups?

Mr. Cole: No, the only thing I understand, there are some other carriers that came in here in favor of it, and I don't know whether they have any witnesses who care to go on the stand or not.

Mr. Belnap: As for the respondents who appear here to justify the suspended schedules, you have made your case?

Mr. Cole: That is it, yes, sir.

Exam. Taylor: Carriers in support of the suspended schedules may call their first witness.

Mr. Enoch: Mr. Sperry.

Exam. Taylor: Mr. Sperry, have you distributed your [fol. 415] exhibits?

Mr. Sperry: Yes, sir.

Exam. Taylor: Are you ready to proceed, Mr. Enoch?

R. E. SPERRY, was sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Give your name to the reporter.
A. R. E. Sperry, 516 West Jackson Boulevard, Chicago.
Q. What is your position?
A. I am Chairman of the Illlinois Freight Association.
Q. How long have you been with the Illinois Freight Association?
A. Since 1921; January.
Q. And just very briefly, what are your duties there in connection with the activities of the Illinois Freight Association?
A. My primary duty is to preside at meetings of the representatives of the carrier member lines, at which are discussed problems of mutual interest to the carriers, which activity also includes that contact with the shipping public with respect to the same problems.
Q. During all of your experience there, you have been in direct contact with rates, freight rates published by the Illinois carriers?
A. I have.
Q. Have you prepared an exhibit to submit in this case?
A. I have.
[fol. 416] Q. It has been distributed?
A. It has been.

Mr. Enoch: We will ask that that exhibit be marked for identification as No. 13.

(Exhibit 13, Witness Sperry, marked for identification.)

By Mr. Enoch:

Q. Mr. Sperry, will you please explain the Exhibit No. 13.
A. The exhibit which has been numbered 13 consists of 19 pages and is a statement of rates in cents per 100 pounds applicable to corn from stations in Illinois and Indiana, which rates apply without transit privileges. The statement also shows interstate rates and specifics to Chicago on grain from the same origins and the distances in miles to Chicago from the same stations. Reference is made to

the tariffs from which the rates shown in the exhibit are taken.

Q. Have you any further comment, Mr. Sperry, in connection with this Exhibit No. 13?

A. I probably should state the primary purpose for the establishment of the rates on corn designated as local non-transit intrastate, which reflected an attempt on the part of the involved railroads to regain and recapture the volume of tonnage of corn moving from the involved stations to Chicago by other forms of transportation, particularly by water.

Q. This exhibit was prepared by you, was it, under your direction?

[fol. 417] A. It was.

Q. The facts purported to be set out therein are correct?

A. To the best of my knowledge and belief, yes.

Mr. Enoch: I offer it, the exhibit, in evidence.

Exam. Taylor: It may be received.

(Exhibit 13, Witness Sperry, received in evidence.)

Mr. Enoch: That is all.

Exam. Taylor: Questions by respondents? (No response.) Any questions by other carriers in support of the proposed tariffs? (No response.) Any questions by parties in favor of the proposed tariffs?

Mr. Bradford: I have one question, Mr. Examiner.

Exam. Taylor: Mr. Bradford.

By Mr. Bradford:

Q. Mr. Sperry, in referring to your exhibit under the column "Local non-transit intrastate rate," if that rate is paid in on a shipment and is subsequently forwarded under the reshipping rates, does it pay on the outbound shipment the difference between the amount shown in the non-transit rate local interstate rate or specific rate? That is, does he make up the difference?

A. It is my understanding that shipments which may be delivered under the non-transit intrastate rate and later reshipped would be subject to the so-called reshipping rates east of Chicago.

Q. And that would increase your reshipping rate so as to make up a difference between the rates shown in the two

[fol. 418] columns, that is, the local intrastate column and the local interstate column; you make up that difference in the outbound shipments?

A. Not as to a shipment not accorded transit.

Q. Maybe you don't get my question. I mean that if a shipment comes in from any of the points shown in your exhibit——

Exam. Taylor: Use a representative point, Mr. Bradford.

By Mr. Bradford:

Q. Well, we will take the point of Elwood on Page 2, in the second block. It shows a local non-transit intrastate rate of 5½ cents. Now, if a shipment came in from Elwood to Chicago and paid 5½ cents in, then it was subsequently reforwarded, would the outbonud shipment pay the difference between, that is, in excess of the reshipping rate, the difference between the column headed "Local non-transit intrastate" and the column headed "Interstate"?

A. My knowledge of the exact application of the reshipping rates from Chicago is not sufficient to enable me to intelligently answer.

Mr. Bradford: All right.

By Mr. Brown:

Q. Mr. Sperry, are not these non-transit local corn rates published to expire some time in June next year?

A. They have an expiration date and I believe it to be June of 1940.

Exam. Taylor: Is that all, Mr. Brown?

Mr. Brown: That is all.

Mr. Glover: I want to ask a question.

[fol. 419] By Mr. Glover:

Q. Mr. Sperry, in other words these local non-transit intrastate rates will not apply on through bill shipments from origin to destinations east of Chicago and they will not apply on stuff sent to Chicago locally and afterwards shipped east by surrender of the local intrastate freight bill?

A. My answer would be no to the first question, but as to the second question, I have got to make the same answer as I made to Mr. Brown.

Q. In other words, you do not know.

A. I am not familiar with the detail of the application east of Chicago. Traffic between here, from Illinois, rather, to points in the East not coming in to the purview of our organization.

Q. When you say down here in the item "Proportion to Chicago of one-factor through rates to Eastern Trunk Line territory," does that indicate you have through charges published from these same origins in Illinois to points east?

A. I believe there are through rates in effect from Illinois origins to points in Eastern Trunk Line territory.

Mr. Glover: That is all.

Exam. Taylor: Any further questions by counsel? Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Are these local non-transit intrastate rates sometimes referred to as lake locals?

[fol. 420] A. I have heard them referred to as such.

Q. That is the same rate you mean when you use that term, is it not?

A. I would understand so, yes.

Q. When were these lake locals first established?

A. Well, rates of this character were first established, I believe, about five years ago.

Q. Have they been in effect continuously since then?

A. They have not.

Q. What has been, in brief, the history of those rates?

A. Well, the rates as stated—of this character as stated were originally published about five years ago, and since that time there have been several lapses with respect to a rate of this character. In other words, rates were originally published to expire on a given date and they were subsequently published to expire on later dates. In some instances, there was no continuity in rates of this character. They were permitted to lapse and later restored.

Q. Do the rates now apply during the winter months, the period of closed navigation on the rivers?

A. They do.

Q. Previously, was there an elimination of specific rates of this character during period of closed navigation?

A. I believe there was one period in which the rates were not in effect during the winter.

[fol. 421] Q. Do you know how many winters that was true?

A. Probably two during the period of five years.

Q. I understand you are not familiar with the rate structure beyond Chicago?

A. No, I am not entirely familiar with it.

Q. You concern yourself and your association concerns itself only with the rates up to Chicago?

A. Primarily, yes.

Q. And in publishing your own rate structure, you have no concern with what happens to traffic after it gets beyond Chicago?

A. Well, as an individual—no.

Q. I mean as the Illinois Freight Association in the matters which come within their jurisdiction and purview.

Mr. Enoch: I think the witness has indicated he doesn't understand whether Mr. Belnap means him personally or the western railroads.

Mr. Belnap: I mean Mr. Sperry's Bureau, association.

Mr. Enoch: Do you mean the western railroads are not interested in what rate is applied outbound?

Mr. Belnap: I am trying to concern myself with Mr. Sperry as Chairman of the Illinois Freight Association, as to whether the rates which that association authorizes and has made effective are predicated in any part on what happened to the traffic after it goes out of Chicago.

The Witness: Mr. Belnap, I had answered that—I will [fol. 422] state further that one of the committees comprising our association is the Illinois Rate Committee. That committee exercises no jurisdiction with respect to rates from Illinois to points east of our territory.

By Mr. Belnap:

Q. Did your association have anything to do with the publication of rates which are here under suspension?

A. No, sir.

Q. Did you make any representation to the eastern lines of what you would like to have them do?

A. Not directly, no, sir.

Q. Did you do it indirectly?

A. We filed a petition in support of the original and subsequent publications.

Q. Those were petitions with the Commission?

A. They were with the Interstate Commission.

Q. Did you file anything with the Central Freight Association itself?

A. No, sir.

Q. How are these lake locals restricted? What is the manner in which they are restricted?

A. They are published for application to Illinois- with a few exceptions, for application to Illinois intrastate traffic with no transit allowed.

Q. Are they filed with the Interstate Commerce Commission?

A. They are filed with the Illinois Commerce Commission. [fol. 423] But it so happens that in certain instances, the rates are published in tariffs which also bear an interstate number. The rates via the Elgin, Joliet & Eastern and the New York Central, because of their geographical location, also apply the interstate rates; but still with no transit allowed.

Q. What is the nature of the provision which says that there should be no transit?

A. It is a simple statement to the effect that no transit will be granted in connection with these particular rates.

Q. Would you read that rule into the record?

A. I do not have it before me.

Q. It is a rule in the tariff, is it?

A. It is a statement in the tariff.

Q. And it is published in the tariff showing this inbound rate?

A. That is right.

Q. Does the tariff contain any provision regarding setting the rate up to an interstate basis in the event the billing is used in connection with a shipment beyond Chicago via rail?

A. I am not familiar with the tariff provisions?

Mr. Belnap: Do you have a witness, Mr. Enoch, who is?

Mr. Enoch: I have got plenty of witnesses. What is it you want to know, Mr. Belnap?

Mr. Belnap: A description of these lake locals, the manner in which they are restricted. I would like to have a witness who would develop the whole fact as to the tariff situa- [fol. 424] tion.

Mr. Enoch: We will be very glad to assist you in any way you request, but I would like to suggest copies of these tariffs are not only on file with the Commission, but all of Mr. Belnap's clients, in the office of the traffic department of each one of those clients they have copies of those tariffs, and that one particular provision to which Mr. Belnap directs attention, they are in the possession of the protestants as well as ourselves.

Mr. Belnap: It isn't a question of whose possession it is in. It is a question of presenting an exhibit and not being able to explain it; the application of the rates. That is all I am interested in.

Mr. Enoch: You are trying to help me out.

Mr. Belnap: Oh, I don't think you need help; I think you will get along all right.

By Mr. Belnap:

Q. Mr. Sperry, do you know what the effect of the lake locals is as to the movement of the grain which moves inbound on those rates as to its movement east of Chicago?

A. In what regard, Mr. Belnap?

Q. As to how it will move east of Chicago once it is moved into Chicago on these lake locals?

A. Well, it has been my understanding that a greater portion of it moves east by lake.

Q. If it is——

[fol. 425] A. That is based on discussion that I participated in and listened to. I have no facts in connection with it.

Q. That is the effect of the lake locals, is it not, to compel an outbound movement by lake or compel the grain to be locally consumed?

A. Did you say the effect or purpose?

Q. The effect; the necessary effect.

A. I am not familiar with movements, Mr. Belnap.

Q. When these rates are being established or are under consideration, did the Illinois lines consider that as the necessary effect of the rates, that is to say, that it would compel the movement of the grain east of Chicago by lake?

A. It was regretted—it was thought that would probably be one of the effects.

Q. You say it was regretted?

A. Yes.

Q. What was the basis for the regret?

A. Well, it was just unfortunate, as I recall it, that the carriers were required to put in rates of that character to meet these other modes of transportation.

Q. And you regretted that as far as the eastern lines were concerned, they would lose some traffic thereby, is that the situation?

A. We regretted the necessity of establishing these unusually low rates to meet rates of other modes of transpor-[fol. 426] tation not on file or under the jurisdiction of the regulatory bodies.

Q. Did your lines give any consideration to the fact that if grain moves into Chicago on these lake locals, the eastern lines have no chance of participating in the movement beyond Chicago, the eastern rail lines?

A. Well, I can't say as to just what might have been in the minds of the representatives of these carriers, Mr. Belnap.

Q. Was that matter ever the subject of discussion?

A. I do not recall that discussion.

Q. Have the eastern lines ever suggested to your lines that the lake locals ought to be taken out because of the effect it has on their competitive situation east of Chicago?

A. Not through me or through our organization.

Q. No such representation ever made to the best of your knowledge?

A. (No answer.)

Q. What are the rates in the column headed "Specific"? I can read the note, but I wonder, what is the application, the practical application of the rates?

A. As I understand it, these so-called specifics, that is the origin of these specifics first antedated my connection with the railroad business. And these maps reflect the minimum earnings to Illinois carriers in connection with through rates to points in Western Trunk Line territory. Now, there, again, I will have to call attention to the fact [fol. 427] that our committee lacking any jurisdiction whatever in connection with the through rates, I am not in possession of all of the facts. The specifics, though, as stated, are taken from Mr. Jones' ICC 3356 and presumably that tariff fully states their purpose.

Q. Let's take the first station, Willow Springs. If I

understand your exhibit, on the shipment of grain from that point to Chicago, the shipper may pay 5 cents?

A. That is correct.

Q. If he pays 5 cents, the billing is useless in so far as any movement by rail beyond Chicago is concerned, is that correct, Mr. Sperry?

A. I am still not familiar with the application of the rates east of Chicago.

Q. I understood this was a restriction up to Chicago. The eastern lines have no restriction but the lines for whom you appear are the lines who provide this restriction. Am I not correct in my understanding?

A. I can't answer your question, Mr. Belnap.

Q. Don't you know who provides the restriction on these rates?

A. The rates are published in tariffs of the—that is, the rates within Illinois are published in the tariffs of the individual carriers and not through our tariff bureau. I am not familiar with the details of the tariff provision.

Q. Do you know under what circumstances a shipper from Willow Springs would pay 7½ cents to Chicago?

[fol. 428] A. I understand that in the event a shipment would originally or in the first instance move into Chicago under the non-transit rate of 5 cents and thereafter be accorded transit, that after the operation is granted and allowed and performed, the charges would be adjusted on the basis of the higher figure.

Q. 7½ cents? That is additional money paid to the inbound line, is that correct?

A. Presumably the inbound line, yes.

Q. Do you know?

A. I don't know, no.

Q. Under what circumstances does anybody pay 8½ cents from Willow Springs to Chicago?

A. I don't know.

Mr. Belnap: That is all.

Exam. Taylor: Any further cross-examination? Mr. Macaulay.

By Mr. Macaulay:

Q. Do you know when the rates referred to in your Exhibit 13 were published?

A. I do not recall the exact publication dates. Do you mean effective?

Q. When they were issued, when they were made effective?

A. I do not recall the issuing date. My recollection is they became effective May 19, 1939.

Q. Is there any reason for leaving out information of that kind when you are trying to set up the gist of a tariff for the purpose of a record? Well, I will withdraw that. [fol. 429] Would you say that the tariffs themselves contain a note that the rates are applicable only on Illinois intrastate traffic?

A. Yes, sir.

Q. And would you say that they also contain a note to the effect that no transit privileges will be accorded?

Exam. Taylor: Talking of the rates in the first column?

Mr. Macaulay: Yes. I am referring to the tariffs which carry the non-transit intrastate rates.

The Witness: I understand that the tariffs do carry a second qualification to which you refer.

By Mr. Macaulay:

Q. And would you say that they also carry qualification to the effect that the rates expire June 30, 1940 unless sooner cancelled, changed or extended?

A. They carry an expiration date of that character and I understand it to be June 30, 1940.

Q. Without additional qualifications, unless sooner cancelled, changed or extended?

A. That expiration is mandatory in connection with an expiration date.

Q. Would you say with reference to the table set up for the Chicago, Rock Island & Pacific Railway Company, that that is shown in supplement 3 to freight tariff No. 34560-B, issued April 12, 1939, and effective April 19, 1939?

A. It may be April 19. It may have been April or May 19th. I remember the day of the month but not the month. [fol. 430] But this, however, was—is submitted as a statement of effective rates.

Q. Would you say that all the various tariffs that are referred to in your Exhibit No. 13 carries similar exceptions and similar effective dates?

A. I understand that they do.

Q. Do you know whether or not they took the place of any like tariffs that were expiring on April 19, 1939?

What I have in mind is, I am wondering if there was any interval of time——

A. There was.

Q. Do you recall how long an interval of time that may have been, Mr. Sperry?

A. Oh, it might be from October, 1938 to April, 1939.

Q. Do you know whether or not the rates set up in your intrastate column are fixed at or above the cost of handling grain from those points to Chicago?

A. Rail carrier cost?

Q. Yes.

A. Well, I am personally not familiar with what the costs may be, that these rates were fixed or determined by the traffic officers of the respective railroads.

Q. Do you know why a restriction was placed in these tariffs which would restrict this grain so that it could not get the benefit of the application of, say, Note 40 of Tariff 535? In other words, what I have in mind is this. [fol. 431] Under these tariffs, there is a provision to protect the local rate. In the event that it isn't possible to apply the cost of the transportation to Chicago on the rate out of Chicago it would seem as though there would be a discrimination and it would not be in keeping with the provisions of the various notes published in 535, 245-F that are applicable to grain arriving at reshipping points.

A. That was a rather lengthy statement and I don't believe that I have assimilated it, but I believe the tariff provisions to which you refer——

Mr. Enoch: If you don't understand the question, I wouldn't answer.

The Witness: I don't. It is more of a statement and rather lengthy.

By Mr. Macaulay:

Q. Then do I understand that you are not prepared to state whether any credit is given on the rate out of Chicago for the amount paid into Chicago on the intrastate rate?

A. I am not prepared to so state.

Q. You mentioned in reply to a question placed by Mr. Belnap that if there was a shipment out of grain from Willow Springs, the 2½ cents difference would be paid to

the inbound line. Would that not be a violation of the various notes contained in Exhibit 2?

Mr. Day: I object to the question. It seems to call for a legal conclusion.

[fol. 432] Mr. Macaulay: He comes here as a representative of the organization who put these rates into effect.

Mr. Day: It seems to me this gentleman's argument could be left for briefs.

Exam. Taylor: The witness may answer if he knows.

The Witness: Question, please.

(Question read.)

The Witness: As I recall, I answered Mr. Belnap that I believed that it would be so paid, and I am not familiar with the tariff provision to which you refer.

Mr. Macaulay: All right.

The Witness: Would accrue to the inbound line.

By Mr. Macaulay:

Q. Could you state whether or not any policy has been established by the Illinois Freight Association as to the extension or continuation of these intrastate rates in the event that reshipping rates are denied from barge billing?

A. No, sir, not through our organization.

Q. So that to all intents and purposes, these rates will expire on the dates set forth in the tariff?

A. Subject to the statement appearing in connection with the expiration date.

Mr. Macaulay: That is all.

Mr. Childe: I would like to ask Mr. Sperry a question.

By Mr. Childe:

Q. For information, Mr. Sperry, referring to the column [fol. 433] headed "Specific Rates" in your Exhibit 13, are the rates shown in that column published in Jones' ICC number shown in the note at the bottom of the page?

A. I have not personally inspected that tariff but all of the figures in these several statements were submitted to the representatives of the respective carriers and were verified; the statements being made that these figures are published in Mr. B. T. Jones' Tariff 3356.

Q. What we would like to know, are they published rates or are they merely a proportion of the through rate which the western lines received?

A. I believe they are designated in this exhibit as "Proportion to Chicago of one-factor through rates."

Q. Perhaps you can tell me by inquiry during recess what the facts are, whether these are published rates or they are merely proportion rates.

Mr. Enoch: They are not published, Mr. Childe.

Mr. Childe: They are not published?

By Mr. Childe:

Q. What is the purpose of putting these in the exhibit?

Mr. Enoch: Perhaps I can answer that question. We were simply making the picture complete as to all of the charges from these various stations in Illinois to Chicago: and in order to avoid any question which might arise if they were not shown, we put them in here.

[fol. 434] Mr. Childe: Put in here merely for information to show what proportion the western lines get on the through rate?

Mr. Enoch: That is right.

Mr. Childe: That is all.

Exam. Taylor: Any further cross examination of this witness?

Mr. Day: I have just one question to clear up something.

Exam. Taylor: On redirect? Any redirect?

Mr. Day: May I ask just this question?

Redirect examination.

By Mr. Day:

Q. Mr. Sperry, you were asked by someone on the other side of the table here if these rates in your Exhibit 13 were not limited to Illinois intrastate application, and you answered that they were.

A. With one——

Q. With certain exceptions?

A. Yes.

Q. Those exceptions are the two routes of the New York Central and the EJ&E that Mr. Tannehill mentioned?

A. That is correct.

Q. And also the Indiana origins which are shown on your Exhibit 13?

A. Being so much concerned with Illinois, I probably overlooked the fact, for the moment, the Indiana stations in there.

Q. Right on the cover page, you say, "From stations in [fol. 435] Illinois and Indiana."

A. Yes.

Mr. Day: That is all.

Mr. Enoch: Mr. Sperry——

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. During the early part of your cross examination, some reference was made to the period of closed navigation on the Illinois River. Do you know of any period of closed navigation on the Illinois River from points like Ottawa or Morris to Chicago?

A. I probably could have been a little more careful in making my answer. When the season of closed navigation was referred to, I probably thought of that period from November 15th, say until late in March. Now, answering your question directly, I know of no time in recent years—past six years—that the Illinois River has been closed to navigation for any substantial period.

Q. You had in mind the period of closed navigation on the Lakes, did you not?

A. Yes, I did, and that period from November 15th to some time in March.

Mr. Enoch: That is all.

Exam. Taylor: Are there any further questions of this witness? (No response.)

By Exam. Taylor:

Q. Mr. Sperry, just let me clear up in my mind these [fol. 436] local non-transit intrastate rates or lake locals, as they are called. Did you state that those rates were established to meet various forms of competition by other modes of transportation?

A. Yes, sir.

Q. Do the tariffs so state that publish these rates?

A. I believe the tariffs carry the statement that the rates are established to meet motor truck and water competition on water and motor truck.

Mr. Enoch: Perhaps there should be an explanation at this point. They appeared in the tariff at the time the reduced rates were originally published. My information now is that it is not, that particular description and the purpose of the rates does not appear in the present tariff.

Exam. Taylor: Anything further from this witness? (No response.)

(Witness excused.)

Exam. Taylor: We will recess at this time until 2 o'clock.

(At 12:30 o'clock P. M., December 19, 1939, hearing adjourned until 2 o'clock P. M.)

[fol. 437] Afternoon Session

2:00 o'clock p. m.

Exam. Taylor: All right, come to order, gentlemen. Cross-examination of Mr. Tannehill at this time. Proceed, Mr. Belnap.

W. T. TANNEHILL resumed the stand and testified further as follows:

Cross-examination.

By Mr. Belnap:

Q. On your exhibit 1, Mr. Tannehill, why did you start your history with 1910?

A. For the reason that that was as far back as we could go without a great deal of research in the tariff bureaus and because that was where we started,—approximately where we started on our rate exhibit number 7.

Q. As I understand it, as of 1910 the rates and the rules in connection therewith were published in the individual issues, is that right?

A. These particular ones were, yes sir.

Q. There was in effect then proportional rates which applied, as you illustrated in the notes taken from the L. S. & M. S. Railway tariff?

A. They applied as per the application shown as in this exhibit, of which these L. S. & M. S. tariffs are an example.

Q. At that time was there any movement of grain by barge into Chicago?

A. To my knowledge, no.

[fol. 438] Q. There was a movement by lake?

A. I would assume so although I was not located in Chicago at that time, but I would assume there was.

Q. The tariffs provide for the application of proportional rates on the ex-lake grain?

A. That is correct.

Q. Now, that was true in 1910 and has been true ever since, has it not, as to the ex-lake grain?

A. Yes.

Q. Now, when did there a movement via barge into Chicago develop?

A. Well, the first that I recall of my knowledge was sometime shortly prior to 1935. I cannot recall whether there was a small movement developed in 1933 or 1934 but I think there was some movement in 1934, but whether that originated in Illinois or originated at the Missouri River I cannot say. The first movement that came to my attention was a movement of wheat. I doubt if that came from any Illinois origin.

Q. That was a movement via the Federal Barge Line from Kansas City, wasn't it?

A. I couldn't say how it moved into Chicago other than by barge.

Q. And under your tariff rules at that time you had proportional rates which were applicable on tonnage which arrived inbound via a water transportation line?

A. At that time we had whatever is shown here in this exhibit number 1 for the territory, yes.

[fol. 439] Q. Well, that was the provision of the rule, was it not, Mr. Tannehill, making the proportionals applicable on grain received inbound in Chicago via water without specification as to whether it was lake vessel or barge or anything else, isn't that correct?

Mr. Day: Well, Mr. Examiner, I submit that the tariff provisions, which are incorporated in exhibit 1, as I understand it, are the best evidence of what the tariffs provide. There is no use of asking Mr. Tannehill about that because even if he contradicted it because of lack of recollection

or for some other reason, what is in the tariff, the tariff provision would still stand as the best evidence.

Mr. Belnap: Well, is there any doubt about that, Mr. Day?

Mr. Day: Well, I don't know but I do know that the provisions are fully set out in the exhibit.

Mr. Enoch: Well, I think there is a question about it, if the Examiner please.

Exam. Taylor: The witness may answer if he knows.

Mr. Enoch: As to the proper application of the proportional rate.

Exam. Taylor: It is his exhibit. He is expected to know.

Mr. Day: I will note an exception, please.

Exam. Taylor: Exception noted on the record.

The Witness: Without checking each one of these it is my belief that they did apply at that time.

[fol. 440] Mr. Belnap: Yes.

The Witness: However, the wording of the various changes are in here.

Mr. Enoch: May I be pardoned now for this interruption? I would like to know what the witness intended by that answer, that these proportional rates did apply to what kind of inbound traffic?

Exam. Taylor: Well, I think we had better go back and get Mr. Balnap's time to which his question related.

Mr. Belnap: The time when the barge shipments commenced to move into Chicago.

Exam. Taylor: That was in 1934 and 1935?

Mr. Belnap: He said it may have been in 1933.

Exam. Taylor: In 1933, 1934 or 1935, Mr. Witness, can you pin it down and give us the page number that covers that?

The Witness: In 1935 they did apply.

By Mr. Belnap:

Q. In what rule of your exhibit 1?

A. Well, you will have to give me a litle time to study the exhibit.

Q. All right.

A. Now, by the way, it will shorten my study if you will tell me what territory you are talking about.

Q. I would like to ask both about C. F. A. and Eastern Trunk Line.

A. Effective June 28, 1935—let's see, wait a minute.

Q. What page of your exhibit?

[fol. 441] A. Just a minute. Page 6. And the change in that—the previous change was on May 1st, 1924.

Q. Now, in that period?

A. In what period?

Q. In this period, 1924 up to 1935?

A. Up to 1935.

Mr. Day: Look at page 4, Mr. Tannehill.

The Witness: To C. F. A. territory, if it originated in Northwestern territory it applied. Effective June 28, 1935 the rule was changed to some extent.

By Mr. Belnap:

Q. What was the nature of the change at that time?

A. In 1924 the note read, among other things: "On shipments which arrive by boat lines to stations shown in note 60"—that is the list of Chicago stations—"originating at any points in the above defined territory." That "defined territory" as Northwest. In 1935, June 28th, it read: "On shipments which arrive by boat lines at Chicago, Kewanee, Mackinaw City, Manitowoc, Menominee, Manistee and Milwaukee."

Q. What page in exhibit 1, now?

A. Page 6.

Q. Which note?

A. Note 40, the last sentence of that note.

Q. It did apply on grain arriving via boat lines regardless of the territory of origin?

[fol. 442] A. That is what it says. on shipments which arrive via boat line at Chicago and the other points.

Q. And before that was there some question as to whether the grain had to originate in the Northwest?

A. Yes, there was.

Q. There was some question before that. The tariff clarified it, to which you now call attention?

A. I don't know whether it would clarify it for that purpose. We changed the language, however, as was noted in the exhibit.

Q. Which did result in making it a little plainer?

A. Unfortunately it did.

Mr. Day: Now, Mr. Examiner, I want to renew my objection here. What Mr. Tannehill has attempted to testify to

here is based on language which is entirely within the four corners of this exhibit, as I understand it. Is that right, Mr. Tannehill?

The Witness: That is correct.

Mr. Day: Now, regardless of how anybody construes this tariff, the language is here and that is the best evidence of what the tariffs contain.

Exam. Taylor: Well, Mr. Day, this witness put this exhibit in, didn't he?

Mr. Day: I know he did.

Exam. Taylor: He expected to be cross examined on it, didn't he?

Mr. Day: He put the exhibit in so the Commission and the [fol. 443] parties could have the language of the tariffs. Now, anything that the witness says cannot vary one particle any particular rule of that tariff.

Exam. Taylor: But he can explain it.

Mr. Day: I don't think so.

Exam. Taylor: Well, do you make an objection?

Mr. Day: Yes, I do object.

Exam. Taylor: Objection overruled. Proceed, Mr. Tannehill.

Mr. Day: Note an exception, please.

Exam. Taylor: Exception noted.

By Mr. Belnap:

Q. Now, this note 40 shown on page 6 of your exhibit, which was put in that style, as I understand it, on June 28, 1935, gave the rates to what destination territory?

A. Central territory. Now, you wanted Trunk Line and New England also?

Q. Yes. Let me ask you about this Central territory.

A. All right.

Q. Now, then, you bring the history down to the present date and insofar as the application of the proportional rates on water borne traffic are concerned am I to understand that no change was intended until the one which came about and which brought about this suspension proceeding?

Mr. Day: Well, now, Mr. Examiner, so that I won't be making a lot of objections here, I want it to be understood [fol. 444] that I object to any of these questions attempting to construe or interpret or place any particular significance

into any of the language in the tariffs that are shown in the exhibit 1. That is absolutely—the language itself is absolutely the best evidence and, as I say, I would like it to be understood that I object to this and all questions attempting to put some different kind of a meaning to that language.

Exam. Taylor: You so understand it, don't you, Mr. Belnap?

Mr. Belnap: I understand.

Exam. Taylor: That the tariff speaks for itself. You are merely seeking information, aren't you?

Mr. Belnap: That is right.

Mr. Day: But you don't expect us to be bound by anything different from what is in the tariff, do you, Mr. Belnap?

Mr. Belnap: The tariff will speak for itself. Now, if there is any controversy about the application of the tariffs, I think it is normal to——

Mr. Day: We can rely on the tariff.

Mr. Belnap: May I finish my sentence?

Exam. Taylor: Proceed.

Mr. Belnap: Have I your permission to proceed, sir?

Exam. Taylor: Proceed.

Mr. Belnap: Where was I, Mr. Reporter?

Mr. Day: You wanted to finish a sentence.

Mr. Belnap: You interrupted me and I don't know where [fol. 445] I was really at.

Mr. Day: Just so we have that understanding, Mr. Examiner. As I say, I don't want to be making a lot of objections here but I do want it understood that we object to going beyond the language of the tariff itself.

Exam. Taylor: The objection will be noted on the record. Read the question, Mr. Reporter.

(Question read.)

The Witness: I don't understand with regard to the word "intention". However, no change was made from June 28, 1935 until September 15, 1939, when we attempted to make this correction which is now under suspension and after a conference with representatives of the Commission's staff withdrew the supplement and filed a new one on October 15th, which is now under suspension.

By Mr. Belnap:

Q. The one that you originally filed and withdrew, what was the difficulty with that supplement, Mr. Tannehill?

A. Well, the particular difficulty with that supplement was that it was not a clean-cut job of saying what we intended and the particular reason for withdrawing it was that certain members of the Commission's staff indicated to some of our representatives that it was hard to understand the tariff and they didn't understand what we were trying to do, so we said we would withdraw it and to a clean-cut job [fol. 446] and when we did that clean-cut job we added back the provision that these proportional rates would apply in connection with grain and grain product rates published from Kansas City to St. Louis, Peoria, Chicago via the Federal Barge Line and filed it with the Interstate Commerce Commission. We added in the note making reference to that item in their atriff.

Q. So the net change that was finally made, which you are here to justify, is removing the application of various proportional and reshipping rates from traffic which arrived in Chicago via the barge line on rates and charges which are not on file with the Commission?

A. That is correct.

Q. That is the whole sum and substance of the change?

A. Removing the application of the proportional rates.

Mr. Enoch: May I have Mr. Belnap's question read?

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

By Mr. Belnap:

Q. Now, will you point out in your exhibit, insofar as Trunk Line territory, the note covering the application of proportionals which was in effect when there first developed a movement of grain via barge and the Illinois Waterways into Chicago?

A. Well, it was applicable in 1921 under note 20, page 14.

Q. When you say "applicable", by that do you mean the proportionals were applicable on grain arriving via water at Chicago?

[fol. 447] A. Yes, sir.

Q. Regardless of whether it was a barge or lake vessel and regardless of whether——

A. Well, of course, we had no barge at that time and we did not make a designation.

Q. That would not affect the application of the item, would it?

A. That is our trouble, we did not tie it up at that time and then when the barge lines came along, why, we had a hard time tieing it up and that is just what we have got around to doing now and are still having trouble getting it into effect. And then they were changed in 1924 by the page 18½ which you have, which still made a provision for the rail and water transportation, however, And following that we made no change until the change we tried to make on September 15th and then later made it on October 15th.

Q. Mr. Tannehill, when you offered these exhibits you called our attention to certain pages and cautioned us that those applied only at Chicago—I mean only at Peoria?

A. Certain rules. I did that for the reason that when this exhibit was prepared they took all of the notes and I did not want anything to be confused, I didn't want anyone to be confused that all of these notes apply at one particular point. In other words, if I had said, for example, on page 17 that note 40 applied at Chicago and you had gone over to note 20 you would not have been able to recon-[fol. 448] cile them and I found that they had not shown in this enough to indicate that they applied at Peoria.

Q. Have you in your oral testimony supplemented the exhibit so that it is now complete and self-explanatory?

A. I have, sir.

Q. Are you familiar with this intrastate adjustment of Lake locals, Mr. Tannehill, so that you can testify about it?

A. I did my best. I put it in an exhibit.

Q. You are familiar with that adjustment?

A. Well, I am familiar with what it did to our lines east of there, if that will help.

Q. Well, I would like to know about that. What is the fact?

A. I think I can probably answer most of your questions. I will do my best.

Q. I say, what is the fact? You said the effect on your lines east of Chicago. What has been the effect?

A. What I mean when I said east of there, I mean east of the Illinois River where certain of our lines, such as the New York Central, had to reduce their rates from DePue

and Streator and Lawston because of other lines reducing their rates to meet this Illinois water and we carried through and made reduced rates. Follow the line of the New York Central within that circle over through——

Exam. Taylor: On exhibit 3?

The Witness: On Exhibit 3. Lawston, Streator, Dwight, [fol. 449] Reddick, Kankakee, Momence, Delmar, then across the state line to Schneider, Indiana, cutting over into the Indiana grain territory and north. So it has had its effect all the way across that line, the meeting of the situation that had been created by the water in the vicinity of the Illinois River.

By Mr. Belnap:

Q. Now, then, how far would you say the territory extends which you characterize as in the vicinity of the Illinois River?

A. In the vicinity of the Illinois River, I would say points like DePue and Moronts, which is not shown on the map but is between Granville and McNab, you will see those two points there on exhibit 3 and, of course, since that time we have found the trucking of that grain quite a distance to the Illinois River.

Q. How far?

A. Well——

Q. Based on your investigation?

A. Based upon my investigation they have come over within four or five miles of Kankakee, Illinois.

Q. And to what points on the Illinois River is grain trucked from within four or five miles of Kankakee?

A. My advice is to Morris.

Q. Then do I understand that your carrying the rate over into Illinois was simply the result of holding the rate from the point as the maximum rate?

[fol. 450] A. Well, to a large extent that was true. Of course, other lines meeting the Illinois River situation, like the Santa Fe through Streator, the Alton line through Dwight, the Wabash through Reddick, were directly competitive with that line and they having elevators there would have to meet whatever situation was created there if they wanted to handle that grain traffic.

Q. How far is it from Kankakee to Morris cross country, Mr. Tannehill?

A. Why, I would only have to guess that, Mr. Belnap, and I might be far wrong. I would say offhand cross country is 40, 42 miles, something like that.

Q. I understand that is approximately right. How far is it from that same point to the elevators in South Chicago?

A. From the same point to the elevators in South Chicago would be probably 60 miles.

Q. Yet you understand that grain is trucked over to Morris and there put on a barge to get to these elevators?

A. That is my advice; that is. from just a few miles west of Kankakee, yes, sir.

Q. How much grain is so moved?

A. Oh, I have no knowledge of the volume.

Q. Is there any substantial volume trucked direct from that territory into Chicago?

A. Not from that territory, to my knowledge, into Chicago.

[fol. 451] Q. Is it the intention of your exhibit, Mr. Tannehill, to show the character of rate adjustment as shown on Mr. Sperry's exhibit 13?

A. That is correct. Throughout the two sets of rates, the state or the non-transit rates and the interstate rates applicable at Chicago.

Q. How are the intrastate rates restricted, what is the method of it?

A. The intrastate rates are restricted to apply only on Illinois state traffic.

Q. That is a restriction by the line publishing the rate?

A. That is correct.

Q. Does that line also provide that the rate may not be used in connection with a transited shipment?

A. In connection with a transited shipment, I am not certain but I would say there would be no necessity for their application for transit being nothing more than state rates. There would be no place in the state for it to go after it arrived in Chicago.

Q. Could you tell me what the tariff applies as the restriction against transit?

A. No, I cannot as to the intrastate rates.

Q. Can these rates be used at the time the shipment is made and then transit claimed on the shipment and the inbound charges set up to the higher interstate basis?

[fol. 452] A. Yes, sir, and my exhibit number 12 shows 792 cars so handled. In other words, they moved in on the lower state rate and when they were transited out the inspection bureau set the charges up. Take my exhibit 12, where it says "normal rate," that was the rate which was assessed into Chicago on those shipments.

Q. Do these lake locals apply on the destination end at interstate points in the Chicago switching district?

A. I think I should correct you that these are not published as lake locals, to my knowledge.

Q. Now, they are commonly referred to that way, are they not, Mr. Tannehill?

A. That may be but the grain trade have a lot of terms the same as we have that I don't think are proper and when you say "a lake local", these rates apply to grain traffic going out of Chicago by lake.

Mr. Day: You do not so refer to them, do you?

The Witness: No.

By Mr. Belnap:

Q. If I ask you the question and use that term you know what I mean, don't you?

A. Well, I want to be sure that I know what you mean.

Mr. Day: We heard you give your explanation of that this morning, Mr. Belnap; that is, we know what you mean.

Mr. Belnap: May I proceed with the witness, Mr. Examiner?

The Witness: Let us get you and I straight before we proceed.

[fol. 453] Mr. Belnap: O. K.

The Witness: These rates apply at Chicago on intrastate traffic. Now, that does not mean that they are only applicable to local,—or to lake movement from Chicago. You can go out and buy a car of grain on that basis and use it here in Chicago if you want and those intrastate rates will apply.

Q. Is that billing registered with the inspection bureau?

A. Yes, sir.

Q. And it can be cancelled against what kind of outbound shipment or what kind of disposition?

A. It can be cancelled against local disposition and the intrastate rates applied. It can be cancelled against for-

warded shipments under transit, either milled or the grain forwarded East, but then the higher interstate rate will apply. Now, when I say cancellation for local disposition, that also means lake movement as well as anything sold locally, so I am not differentiating between lake and local disposition.

Q. Now, will you get back to my question as to whether or not the intrastate rates, which I call lake locals, apply to all points which are interstate in the Chicago switching district?

A. They do not, not the intrastate rates, no, sir.

Q. Are there users of corn with plants located in the Indiana portion of the Chicago switching district?

A. If you mean the American Maize at Roby, yes.

Q. Have you the point where the transit operation takes [fol. 454] place or took place, rather, on the cars shown in your exhibit 12?

A. At Chicago.

Q. You mean the City of Chicago?

A. It took place within the Chicago switching limits.

Q. Do you know whether it took place within the Indiana portion of the Chicago switching district?

A. It might have and it might have taken place at Argo, Illinois, the Corn Products.

Q. Could you ascertain that fact from the advices about it?

A. I can.

Q. Will you do so, please?

A. I will but I want to correct this now while we are on the subject: If they w-nt to Roby, Indiana, the intrastate rates did not apply but the interstate rate was applied.

Q. I see.

Exam. Taylor: Do you still seek that information after that explanation?

Mr. Belnap: Yes.

The Witness: If a rate is published intrastate it surely cannot apply to an interstate move whether it went to Roby or Argo or some other point.

Q. Well, that is correct, but is this practice sometimes followed, that grain moves into Chicago but the intrastate rate is paid into Chicago in Illinois and then the cars are subsequently moved or handled to Roby?

[fol. 455] A. Oh, there probably are but they would never handle them for my railroad if I was operating it when they moved it over to Roby,—the charge would be immediately set up and the interstate rate paid.

Q. That would have to be so, wouldn't it, under the tariff?

A. If they didn't want to go to jail it would.

Q. Are there any such cars included in your exhibit number 12?

A. They might be.

Exam. Taylor: Now, Mr. Belnap, do you want to withdraw that request?

Mr. Belnap: No, I would like to know to what extent that is true.

The Witness: I can tell you whether any of these go to Roby or whether it is all milled within the Illinois part of the Chicago district.

Mr. Belnap: Now, you see, in that situation, Mr. Examiner, that milling at Roby, they would have to pay an interstate rate.

Exam. Taylor: I understand but I thought maybe you would consider his final answer as obviating the request.

Mr. Belnap: No, I would like to know how many of these shipments were milled at Indiana points so that by force of the circumstances which the witness described they had to pay the interstate rate.

The Witness: Now, let me explain this, Mr. Belnap, these were taken from expense bills which have been used for [fol. 456] cancellation in the inspection bureau before they sent them to the individual roads' auditors for correction to the higher basis because the transit had gone out. I may not be able to check every one if since this report, which was made last week, those expense bills have gone back to the individual auditors bit I can develop whether or not there were any of them transited at Roby.

Q. While you are ascertaining that will you also ascertain for us, please, whether any of the cars shown on exhibit 12 went through elevators in Chicago so that the elevator—when the grain was reshipped from the elevator the penalty was assessed and paid?

A. May I have that read, please?

(Question read.)

Mr. Brown: Reshipped where to?

Mr. Day: Mr. Examiner, may I just suggest, perhaps in the interest of expedition, that if Mr. Tannehill will look at his exhibit 12 he will see on it shipments that originated, for instance, at Belshaw on the New York Central, which has an interstate rate and which was explained first in your testimony and later by Mr. Sperry, that there are those interstate rates and they would apply to a point like Roby, would they not?

The Witness: Yes. Of course, Mr. Belnap was talking to intrastate rates, not interstate rates.

Mr. Day: I understood he was covering the entire situa-
[fol. 457] tion of these rates from Illinois and Indiana.

The Witness: It is my understanding he was talking to Illinois state rates.

Mr. Belnap: That is right.

Mr. Day: But insofar as a shipment originating in Illinois on the New York Central is concerned, that rate could apply to Roby, Indiana?

The Witness: It could apply to Roby, Indiana; that is correct, sir.

Mr. Enoch: If your Honor please, I would like to inquire whether the intimation is in this line of cross-examination that the intrastate rate inbound is assessed and that assessment is maintained all over although the outbound shipment by rail engages the outbound all rail proportional rate? Is that what you have in mind, Mr. Belnap?

Mr. Belnap: I don't believe I could hear you. You talked a little low. May I have it read?

Exam. Taylor: Yes, let the reporter read the question.

(Question read.)

Mr. Belnap: I have not inquired about that.

Mr. Enoch: Are you seeking information about that?

Mr. Belnap: Not at this point I am not.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. You will advise me about those two matters, will you not, Mr. Tannehill?

[fol. 458] A. I will do my best. I won't guarantee to advise you as to specific cars.

Q. Oh, well, I should think whoever prepared this for you would have a general idea of just what the cars were and how they happened to be in that situation.

A. I will find out what you want.

Q. And, also, as to whether any of them went to elevators. Does exhibit 12 purport to be all the cars in the period mentioned which moved into Chicago with the intrastate rates paid initially and which were later re-forwarded under transit?

A. Oh, no. This says, "Of 792 cars." I would surely hate to think that was all the cars that we handled since—or that the rails handled from that territory. We have handled more grain that that, I am sure, but we handled 792——

Exam. Taylor: This is limited to corn?

The Witness: Well, of corn even, but 792 cars cover the expense bills that the inspection bureau had on hand cancelled ready to send back to the auditors to make the proper balance due bills or any other settlement that was necessary at the time this was made up last week.

By Mr. Belnap:

Q. Mr. Tannehill, in this same period, May 1 to November 30, 1939, how much intrastate billing was cancelled against shipments from Chicago via lake?

A. Well, I haven't said anything about—I think I have some figures on it. I haven't the figures with me, Mr. Belnap.

[fol. 459] Q. Could you get that information for me, Mr. Tannehill, from your inspection bureau?

Mr. Cole: May we have the original question, please? I don't think the witness——

Mr. Belnap: May I state it off the record?

(Discussion outside the record.)

The Witness: I can give you that very quickly. I have it upstairs, if you desire it.

Mr. Cole: Now, wait a minute, off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Let us get back on the record now. Proceed, Mr. Belnap.

By Mr. Belnap:

Q. Now, have these intrastate rates had the effect of making it more difficult for the Eastern lines to participate in the rail movement east of here?

A. Well, it hasn't helped any but the trouble of it is that it is spreading so that not only are we here trying to help our neighbors make a little money, our Western friends, but our own lines have some three thousand miles or better of line in Illinois to which this is spreading and we are interested in the originations of grain in Illinois outside of getting it at Chicago. Our lines have a good many country elevators in Illinois, the lines of the New York Central, B. & O. and the Pennsylvania, Big Four, the Wabash, and the effect of these reductions, whether [fol. 460] they are made because of barge transportation,—I mean whether the transportation is on the barge or what, it is being felt more and more over beyond the Indiana-Illinois line, so that we are interested, before we have to pull down all of those rates and then pull everything east of there down, our grain rates, we just want to look at them, so that they are just entirely too low today without trying to find someway to make them even lower.

Q. My question related to the effect of these intrastate rates on the movement east of Chicago; the effect itself of this adjustment is to push it over the lake if it is at all possible for the grain to move that way, isn't it?

A. The intrastate rates—that is what we thought, but maybe you better withhold that question until I give you the figures of it in this statement.

Q. I will be glad to. And insofar as what you now propose in connection with grain going to Chicago via barge, what will the effect be as far as the Eastern lines are concerned as to the movement?

A. Well, we hope the effect will be of additional all-rail grain from this Illinois territory and not a disturbance of all of the market throughout Central Illinois territory so that our lines in this territory having country elevators on there can have their grain loaded into cars from those country elevators and moved all-rail.

Q. You wouldn't mind answering my question that I [fol. 461] asked you about about the movement east of Chicago, would you?

A. You said the lines east of Chicago.

Q. The rails east of Chicago.

A. Of course, we have some rails down in Illinois.

Q. I mean the rails east of Chicago, the effect.

A. The rails east of Chicago are concerned with this because of the threatened reduction in the rates from points east of Chicago.

Q. You wouldn't mind answering that question about the effect of this on the way the grain is to move?

A. I don't know. If it stands as it is today, or as it is tomorrow, the supply and demand of grain will be the sole answer to how much additional or how much less grain will move east of Chicago.

Q. As far as grain coming into Chicago by barge is concerned it is going to go over via the lakes; that is sure, isn't it?

A. No.

Q. You don't think that is sure?

A. No.

Q. What do you think will happen, Mr. Tannehill, with that grain that comes into Chicago by barge and is going to move east?

Exam. Taylor: That is supposing these tariffs are found justified.

By Mr. Belnap:

Q. Yes, that is supposing these tariffs are found justified. [fol. 462] A. Oh, there will some of it move down there if the demand is found right, probably by rail.

Q. And at what kind of a penalty?

A. And pay the local rate from Chicago?

Q. And how much additional is that over the proportional rate?

A. Well, it would vary; sometimes a cent and a half and sometimes as much as eight and a half.

Q. Did you make this proposal in the hopes that it would influence that kind of a movement via rail from Chicago ex-barge grain, is that the purpose?

A. We made this proposal, as I have stated several times, and filed these tariffs with the hope that we could drive this business off of the water and back onto the rails where it belongs and quit whittling down our rates farther and farther away from the influence of this water all the time

because of cross-country competition in the origin territory and to put this grain back on the rails where it belongs.

Q. Now, let us go back to the question I want to ask you about: That is, the ex-barge grain that has been brought into Chicago by barge, it is here and it is going to move east. Now, did you make this proposal in the hopes that if it became effective you would induce the movement of that grain over the rail lines?

Mr. Cole: Mr. Examiner, if I may be permitted to interrupt here with an objection, Mr. Belnap, I think, is attempting a little too close a pinning down here because our wit- [fol. 463] ness has already three times that I have listened to explained that the railroads that operate east of Chicago also had lines that extended from these very origins and they have lines down within this territory along the river and he said that he wanted to get the grain back on those rail lines that would move east. Now, of course, Mr. Belnap is driving to drive it down, well, if it moved some other way first as an entirety to some destination where it was going? He has been specific now three times on that and I think perhaps the attempt to drive him is, if I may be permitted, it is almost overreaching Mr. Belnap's own purpose.

Mr. Belnap: Well, Mr. Examiner, I don't want to stop to argue the case. I would like to get some facts and I would like to get the facts about the particular situation, the purpose of this proposal insofar as the movement of grain east of Chicago is concerned, that is all I want to know from this witness right now. I will ask him about some other things later but I do want to know if the Eastern carriers in any part made this proposal in a belief that it would induce grain which has come into Chicago via barge to move over the railroads when it left Chicago?

A. No.

Q. You appreciated, did you not, Mr. Tannehill, when you made this tariff proposal that the effect insofar as the movement east of Chicago is concerned,—I am speaking still about grain which arrived at Chicago by barge,— [fol. 464] will be to force it out onto the lakes?

A. Well, that is your statement.

Q. If it can possibly move that way?

A. If the question of supply and demand is there it might move water—or might move rail but it is only natural to

assume if it is export grain or grain that is going far into Trunk Line territory without transit within the nearby C. F. A. territory where it may be milled, it will go by water, but don't overlook this, Mr. Belnap, that the large part of the grain that we handle out of Chicago is for transit intermediate to the seaboard, which they cannot get via lake.

Q. Looking at the situation east of Chicago again, do you believe that if your proposal were made effective it would increase or do you believe it would reduce the tonnage moving via rail?

A. It will do neither except as to the supply and demand for the grain. That is my personal belief.

Mr. Cole: Just a minute. Will the reporter please read that question again and, Mr. Tannehill, will you please listen very carefully to the question and then will you answer it again, please?

Mr. Belnap: Answer it differently this time?

Mr. Cole: No. I have just said that he should listen carefully to the question, I am sure he did not hear it, and then answer it again after he listens to the question.

[fol. 465] Mr. Belnap: Why don't you ask him on redirect, Mr. Cole, if you think he made an erroneous answer?

Mr. Cole: I think he did. I don't think he listened to that question.

Mr. Belnap: Well, why don't you take him on redirect?

Mr. Day: It is not redirect. That is just asking him to listen to the question.

Mr. Cole: He did not listen to it.

Mr. Day: Because it appears to Mr. Cole that he did not understand it. There is no redirect about that.

Exam. Taylor: Let us read the question and see if we can get rid of it.

(Question read.)

The Witness: What was the answer?

Mr. Cole: That is the question. Now, will you please answer that question that he just asked you?

The Witness: Yes. I don't think it will make one iota of change so far as the rates are concerned. It will be entirely a question of supply and demand as to increase or reduction in the movement of grain east of Chicago.

Mr. Cole: East of Chicago?

The Witness: That is what he asked about, east of Chicago.

By Mr. Belnap:

Q. That is, you think you have just as much likelihood of getting for rail movement this ex-barge grain if you increase the rates east of Chicago by eight and a half cents?

[fol. 466] A. That was not your question.

Q. That was the question.

A. But you don't get inbound barge grain which you don't have originally. My answer to your question was that if these rates, and this restriction went in my answer, was that we would handle just as much grain east of Chicago as we are handling today and probably maybe a little more or a little less, based on the law of supply and demand. Now, if you are talking to barge traffic inbound, then using your question, ask your question on barge traffic inbound. That was not what you asked.

Q. All right. Well, I understand, then, your first answer——

A. On barge traffic inbound we might lose. Maybe there won't be as much barge traffic.

Q. Whatever it is it won't go by rail?

A. Some of it might.

Q. Do you think it will increase it?

A. No, it won't increase it. I don't think it will increase the movement of barge traffic.

Q. Do you think it will reduce it?

A. It might.

Q. Do you think it will?

A. It might.

Q. Have you any doubt about it?

A. It might reduce the barge traffic but to the same point it would probably increase our movement of traffic [fol. 467] that came in by rail and out by rail, in all probability.

Q. That is, you hope that the balances, if I understand you correctly, on the last shipment east of Chicago——

A. What we may lose to the barge we will at least pick up from the rail movement east of Chicago.

Q. You hope to get the additional movement into Chicago by rail?

A. Yes.

Exam. Taylor: He has got the figures now on that question that you raised.

Mr. Belnap: All right.

Q. Can you furnish it?

A. What is it you want to know?

Mr. Cole: I think that was the local intrastate traffic inbound that was cancelled.

The Witness: I will give you all of these figures. Get your pencil so that I won't have to repeat it. First I will give you the statement on the barge grain from May 1st to November 30, 1939. There were 618,292,112 pounds arrived by barge and registered with the inspection bureau for transit. That included 411 barges. Using an average weight of 84,638 pounds that meant 7305 cars inbound by barge, that is, the equivalent of. The disposition: 49,130,000 pounds, 607 carloads, moved out by rail to Central Freight Association destinations. 49,050,000 pounds, 553 carloads, moved out by rail to Eastern Trunk Line and New England destinations. That would include any ex- [fol. 468] ports that might be involved. 438,711,516 pounds, 5183 carloads, were reshipped via lake. 19,860,881 pounds or 235 carloads was cancelled for local disposition and on hand November 30th was 61,540,715 pounds or 727 carloads. Now, that shows that very little of the barge grain moved out by rail.

Mr. Belnap: So it doesn't amount to much.

The Witness: Yes, it does because of the origin territory that you are whittling down all the time.

Mr. Day: This can be off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

The Witness: The next statement during the same period, from the territory on exhibit 3, circled in heavy dark lines,—do you know what I mean, Mr. Belnap?

Mr. Belnap: Yes.

The Witness: There was a total of 16,771 cars of grain arrived at Chicago and registered for transit during that period.

Mr. Bradford: Is that of grain or corn?

The Witness: That is corn and so was the other one corn. The disposition was 1111 cars to Central Freight Associa-

tion territory. Reshipped to Eastern Trunk Line and New England destinations 1200 and—1240 cars. Reshipped to all other destinations, 201 cars. Cancelled account lake movement 9503 cars. Cancelled account local disposition [fol. 469] 1032 cars. Total disposition 13087 cars. Balance on hand 3684 cars.

Exam. Taylor: Does that supply the information that you wanted?

Mr. Belnap: That supplies the information, yes, sir.

Q. Can you tell me in that same period what was the total shipments from Chicago on which transit was claimed, Mr. Tannehill, total shipments all-rail?

A. From this territory?

Q. No, From Chicago.

A. Oh, no, I couldn't tell you, I have no record of that.

Q. Do you have the record from the territory shown?

A. No, sir. This is all I have got. I have given you everything I have.

Q. I thought you had. Turn to your exhibit 5. Why do you ask Mr. Brown for a barge rate, Mr. Tannehill, when your inspection bureau has got billing over there that is registered and shows it?

A. Have they?

Q. I understand so from what was said here this morning.

A. Well, I asked Mr. Brown because I thought he would know more what would cover all and I didn't want to take anything too low, I might have gotten a lot of figures from our inspection bureau and one thing and another that might not have covered elevation or some other charge that the elevators or barges put against this grain as part of the transportation by water and I asked Mr. Brown,—I therefore thought Mr. Brown was in a better position to tell me [fol. 470] what that charge was than I would get by guessing at it from information that we might have.

Q. You have on your bills, do you not, as far as the Federal Barge Lines are concerned a statement of their port to port rates in their tariff?

A. No, not any port to port rates, no, sir.

Q. They do not supply you with that document?

A. Oh, no, they do not publish them.

Mr. Oliphant: That is not a correct statement.

The Witness: If they are they do not file them with us, but they do have one rate that is involved here that applies

as a proportional rate on traffic from beyond Kansas City to Chicago, Peoria and St. Louis on traffic destined beyond, which is on the Barge Line Ex Parte 96 formula and published and filed with the Commission and to that these reshipping rates, we are proposing that they apply.

Mr. Oliphant: Might I ask a question? Are you sure, Mr. Tannehill, as to the application of those Ex Parte 96 rates?

The Witness: Well, they are in the formula. Whether they come right down to the point I don't know. I will leave out the "Ex Parte 96." They are about a cent and a half less than the all rail rate, is my recollection.

Mr. Oliphant: They are not made with relation to the formula whatsoever.

The Witness: They are not? I will take your word for it.

[fol. 471] By Mr. Belnap:

Q. On your exhibit 5, Mr. Tannehill, you have a circle reference "2," as far as the rates are concerned but I do not pick it up easily on the exhibit itself. Do you know where it is? I wonder if it should have applied to the distances?

A. It should have applied to the distances.

Q. The all rail distances?

A. Yes, the all rail distances.

Mr. Day: In other words, they are part of a circle 2 reference there, "All rail"?

The Witness: That is right.

By Mr. Belnap:

Q. What is the purpose of your exhibit number 7 and number 8?

A. 7 and 8 both were put in to show that generally the proportional rates via St. Louis, Peoria and Chicago are equalized both for account of the gateways and for the markets from the territory beyond.

Q. Is it possible, however, to go from Chicago via lake and get to final destination on a much different basis of charges than is paid all rail?

A. What kind of lake?

Q. Lake; from Chicago via lake?

A. Well, we have,—we make rail rates that are made with relationship to these rates and they equalize the gateways like Manitowoc.

Q. They do what?

[fol. 472] A. They equalize the gateways like Manitowoc and Milwaukee but they won't apply generally in New England territory. Now, of course, in addition to that you have your charter boats on the Great Lakes which do not file anything with the Commission and those,—I don't know anything about their charges.

Q. If you are coming from South Dakota you can put your grain on a boat at Duluth, can you not?

A. Yes, and it also equalizes through Duluth to some extent by the publication of certain proportional rates from Chicago via the Canadian lines into New England all rail.

Q. Well, can you use the lakes from Duluth in connection with a movement to Peoria or St. Louis?

A. No.

Q. A substantial part or a substantial movement of grain moves over the lakes?

A. Oh, yes, but not at any tariff published rates. I think you will recall that the Great Lakes transited here last year for a time and we billed in Chicago because there was no more tonnage for it. That is the operation that the through rates are published with, not with the——

Exam. Taylor: Not with the what?

The Witness: So-called charter boats. We publish no rates with them.

By Mr. Belnap:

Q. To these destinations where you have a variety of proportionals, one that you called the Northwest and Trans-

[fol. 473] Mississippi, how do you happen to select the Northwest to apply on the barge grain from Illinois River points?

A. That starts out by a statement that it was never intended that they apply from Illinois River points, but——

Q. Mr. Tannehill, the tariff speaks for itself.

Mr. Enoch: Wait a minute. I think the witness ought to be permitted to finish his answer.

Exam. Taylor: Yes.

The Witness: If you will let me finish, please.

Mr. Belnap: Yes, proceed.

The Witness: That is the first part of the statement and again I want to go back to what I said, these grew up like Topsy, these rules, and they were changed from time to time

and now we are trying to fix something that grew up that was never intended and the reason that the Northwest applies is because we applied the Northwest rates on traffic that came via Duluth and thence water to Chicago and then when it got to Chicago by that water transportation we applied this Northwest proportional to that because the grain actually originated in the Northwest at the time that this application was first perfected and it was never intended that they apply to this Illinois River lay-out.

Q. So you put in the tariff that on the Illinois River lay-out you would not apply the Northwest proportionals?

A. No, we had to interpret the tariff that way because of [fol. 474] the way it read. Now we are trying to fix it.

Q. Do your lines make any particular point of the fact that the factors up to Chicago on the barge traffic are not filed with the Commission?

A. Oh, that is part of it, yes, we do, but that is not all.

Q. Would you be willing to establish these proportionals on the ex-barge grain if the barge rates to Chicago were filed with the Commission?

A. If they would not cut the territory I think our lines,—I can only speak for myself now because I have not discussed that with our lines, it is an entirely new factor, but if your rates were filed with the Interstate Commerce Commission on a proper basis, one that was not going to do violence to the rail rates, I think our lines would——

Exam. Taylor: You mean the rail rates or the rail adjustment on grain?

The Witness: Or rail adjustment.

Exam. Taylor: On grain?

The Witness: Yes, sir.

By Mr. Belnap:

Q. Well, take a point like Morris: What do you think the proper rate from Chicago ought to be via barge?

A. I don't know. I haven't gone into it, I haven't given it any thought as to what the proper rate might be. I would want to study that. I would want to study the proposition in its entirety.

[fol. 475] Q. What is the interstate rate via rail from Morris to Chicago?

A. Have you got it? I will take your word for it.

Q. No, I haven't.

Mr. Day: Exhibit 4, page 3, of the Rock Island Railroad.

The Witness: 9½ cents.

By Mr. Belnap:

Q. It has been represented to you by Mr. Brown of the Board of Trade that the barge rate to Chicago is 4⅛?

Mr. Enoch: Now, I would like to know more about this representation, whether it was a rate and what barge line represented it. Do you claim there is a rate from Morris to Chicago of 4 cents, Mr. Belnap?

Mr. Belnap: 4⅛ is what the witness shows as the rate.

Mr. Enoch: I want to know what you claim about it.

Mr. Belnap: I am not claiming or arguing. I am trying to get some facts here, Mr. Enoch.

Mr. Day: Why don't you put in the facts, Mr. Belnap?

Mr. Belnap: When I cross examine a witness I cannot do two things at one time.

Mr. Day: You are not cross-examining the witness. Mr. Brown made clear the statement as to what that 4⅛ cent rate was and told you all about it.

Mr. Brown: And I would like the record to show that I got it out of Mr. Belnap's protest. I do not claim that it is right.

The Witness: I know there are figures in your protest showing what your barge charges and I did not even use [fol. 476] those. I went to Mr. Brown and tried to get the proper charge.

By Mr. Belnap:

Q. And he gave you what he found in some document I filed.

A. That is what he says now.

Mr. Brown: I think that is the only place I ever saw it.

Mr. Enoch: Now that we are on that maybe we can get an explanation as to how that 4⅛ is arrived at. I think that would be interesting to have at this time.

Mr. Belnap: From whom?

Mr. Enoch: If you care to make the explanation. You are the sponsor of it.

Mr. Belnap: I am not on the stand.

Mr. Enoch: As far as the Rock Island is concerned, if the Examiner is willing you can make it right there.

Mr. Belnap: I don't know where it came from.

Mr. Oliphant: Mr. Examiner, the witness has a rate in the exhibit. I think we are entitled to question him on it. I think we are entitled to get the authority for that particular statement.

Mr. Day: He gave the authority as from Mr. Brown and he stated what it was.

Exam. Taylor: I think there is sufficient in the record.

By Mr. Belnap:

Q. I am calling your attention to the rate all rail of 9½ and the barge charge or rate or whatever you want to call it of 4⅛. Now, as I understand it from you, the Eastern [fol. 477] lines would still be willing to apply that proportional in connection with the barge line if this inbound factor was on what they considered to be a proper basis, is that correct?

A. I said I had not discussed it with our lines but I thought that our lines would give consideration to any proposition that might be submitted by the barge lines where they would file their rates and be governed by the rates they file with the Interstate Commerce Commission that did not do violence to the all-rail adjustment and in that we would take into our confidence the Illinois lines serving this territory.

Q. That is, there is a basis on which this thing can be worked out?

A. Well, at least——

Mr. Day: I object to the question. It is going way beyond the scope of any proper cross examination.

Exam. Taylor: Objection sustained. I think we have gone far enough on it, Mr. Belnap.

Mr. Belnap: The thing I would like to develop is how far this matter of non-filing with the Commission is back of this proposition, Mr. Examiner. Perhaps the record does sufficiently show that.

Mr. Enoch: I don't think Mr. Tannehill is in a position to answer it fully and completely because——

Mr. Cole: Well, the Examiner has ruled on it.

Mr. Brown: Mr. Examiner, I think the witness should [fol. 478] first get Mr. Belnap's proposition if he has got one.

Exam. Taylor: Have you anything more, Mr. Belnap?

Mr. Belnap: Just a second, please. Just one other matter.

Exam. Taylor: All right.

By Mr. Belnap:

Mr. Tannehill, When the lines whom you represent perform the service of transporting the grain into Chicago is it not true that the service they may render in taking out of an elevator grain which is covered by barge billing is identical with the service which they would render on the same species of grain if it had lake billing behind it or if it had rail billing behind it?

A. There isn't any question, Mr. Belnap, that in the same elevator the three kinds of grain, we would not render any different service so far as the railroads east of Chicago are concerned.

Mr. Cole: What three kinds of grain?

The Witness: Rail grain that was in that elevator, barge grain that was in that elevator and ex-lake grain that was in that elevator.

Mr. Day: Or truck grain?

The Witness: Or truck grain. Well, truck grain would not get in on ex-barge or any proportional rates either.

Mr. Day: But the service would be the same.

The Witness: The service would be the same but truck grain does not get any special consideration such as we are now giving the barge.

[fol. 479] Mr. Day: The question he asked you was as to the service by the Eastern lines.

The Witness: That is right, the service would be the same.

By Mr. Belnap:

Q. You understood my question related to the service outbound from Chicago to the East and that is the way you answered it, is that correct?

A. You are right.

Mr. Belnap: Yes. That is all I have.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Mr. Tannehill, do you know when the hearings were announced before the C. F. A. relative to the change in these tariffs?

A. I don't know what you mean by "hearings", sir.

Q. I have a hearing bulletin No. 1002, dated November 23, 1938, and this is what I have reference to.

A. Well, you asked when the hearings commenced?

Q. That is right.

A. Your question was wrong to start with. That was a hearing announced and I believe you were there. It was on December 6, 1938.

Q. That is right and it was pursuant to a notice of this kind?

A. And it was pursuant to that notice but as far as hearings, no, sir, it was not. After that hearing we had no further hearings so far as the Central Freight Association General Committee were concerned.

[fol. 480] Q. But that was the first hearing at which the matter was initiated?

A. That was the only hearing.

Exam. Taylor: Now, Mr. Macaulay, will you state for the record what you are reading from?

Mr. Macaulay: I am reading from a mimeographed copy of hearing bulletin No. 1002, Central Freight Association, dated Chicago, November 23, 1938, announcing a hearing on certain specified subjects on Tuesday, December 6, 1938 and one of them is docket advice No. 56,233 relating to the cancellation of Note 40 and I believe the other matters which are now in issue.

Exam. Taylor: Thank you. Proceed.

By Mr. Macaulay:

Q. Do you know whether or not, Mr. Tannehill, the matter of the application or the denial of reshipping rates from barge grain was initiated by the Chicago Board of Trade?

A. It was not, sir, as far as I know.

Q. The reason I ask that——

A. Not so far as our Association was concerned it was not initiated by the Chicago Board of Trade. It was initiated by our association.

Q. In the petition of the Board of Trade of the City of Chicago,—you may or may not have seen this,—is a statement to the effect——

Mr. Cole: I object to any statements that were in any minutes or meetings of the Chicago Board of Trade, if the [fol. 481] Examiner please.

Mr. Macaulay: This is a petition before the Interstate Commerce Commission.

Mr. Day: It is not proper cross examination.

Mr. Cole: In this proceeding? I don't understand what this gentleman is trying to cross examine this witness on, Mr. Examiner.

Mr. Day: It is some petition to the Interstate Commerce Commission by the Chicago Board of Trade in some case.

Mr. Macaulay: I am trying to see whether or not the information that is in this petition might change his answer in any way.

Mr. Day: Well, that would not be proper cross examination with this witness. They have got a Chicago Board of Trade man here.

Exam. Taylor: Objection sustained.

By Mr. Macaulay:

Q. Referring to exhibit 2, note 40, page 4, the rates which are now applicable refer to shipments reaching the reshipping point via a rail or water transportation line and on page 8 is set forth revised note 40, the matter of the grain arriving at Chicago and other lake points, is set forth in a separate paragraph. I want to call that to your attention. Do you know the reason why the lake shipments were put into a different category from grain arriving at a rail,—via a rail transportation line at these reshipping points? [fol. 482] A. Yes, they have always been in a different category in the minds of our carriers. There was never any connection nor any competition, to my knowledge, between ex-lake grain and this corn that is coming up the Illinois River. Your ex-lake grain generally is barley or wheat and it had a rail movement prior to its water movement to Chicago and if we did not provide some basis for that grain so it might come through Chicago, if it only lay in the elevators at Duluth, Superior, Ft. Williams and Ft. Arthur until navigation was open and moved down on the lakes and thus deprived our lines between Chicago and

Buffalo of that tonnage,—it is not tonnage that is competitive with you, as I see it, in any way.

Q. Is there any restriction in those rates which require that the grain arriving via lake carrier vessel must first have had a rail movement?

A. There is not but where is there any place on the Great Lakes that grain is raised?

Q. Well, there is no restriction, though——

A. There is not.

Q. —that it must have had a prior rail movement?

A. There is not.

Q. If it came from foreign countries it could still have come in on the rate even though it did not have a prior rail movement?

A. Your question is rather far fetched as to foreign [fol. 483] countries but answering what you are leading up to, the application of this rate to Argentine corn was the railroads bit to help you, the railroads bit of help when you didn't have corn in this country and had to have it out here to take care of your industries and we did apply it at that time on Argentine corn, it would apply, but under normal conditions we all know that foreign grain, or Argentine corn is not coming into this country through the Great Lakes.

Q. You have answered my question. There is no restriction requiring a prior rail movement?

A. There is no restriction.

Q. And there is no restriction now, if these tariffs are amended, requiring a protection of the local rate out on the rail from the reshipping point, is there?

A. I don't believe you understood your question. Will you read it?

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

The Witness: I don't understand the gentleman's question.

Exam. Taylor: Can you reframe that question, Mr. Macaulay?

Mr. Macaulay: Yes.

Q. Under note 40 before amendment there is a statement to the effect that in order to get the benefit of the reshipping rates a showing must be made of the amount paid to the

reshipping point in order to protect the local rate from [fol. 484] Chicago. Now, under the note 40 as amended there is no such restriction, isn't that correct?

A. No.

Q. Now, Mr. Tannehill, you mentioned that you hoped to drive the grain from the barge to the rails so that you will have more grain to ship East. Can you explain the basis for that hope?

A. Part of your statement is incorrect.

Q. Well, pardon me if it is.

A. I said we hope to get the grain off of the barges. I didn't say so we would have more grain East.

Q. All right.

A. That part of it I want to correct you on, that I didn't say that.

Q. As you interpret this——

A. Wait. We are not in love with water transportation; you are not in love with rail transportation; that is just the difference between the two of us and we are paying our good taxes, our railroads are paying their good taxes for the privilege of operating their lines and we believe that we are entitled to that grain business.

Q. Will you state how you intend that it will come to you if these rates are denied?

A. I think on an reasonable equality of rates the grain will come to us without any trouble.

Q. In other words, if a higher price, or if a lower price [fol. 485] is paid for the grain by rail than by—or a higher, an equal or higher price is paid by rail than by barge it will come to the rails?

Mr. Cole: Just a minute. I object to that question of joining prices in here. There has been no testimony about that.

Mr. Macaulay: I am asking for an explanation of how he arrived at his conclusion that there would be more grain for the rails.

Exam. Taylor: Well, there has been quite a bit of discussion of that, Mr. Macaulay, if you were listening, and Mr. Belnap brought out what might happen with respect to the New York Central Lines in its effective territory and things of that kind and his desire to maintain the present rate structure on grain.

Mr. Macaulay: The point I am trying to bring out, Mr. Examiner, is that grain necessarily can only be shipped by barge by reason of a higher price being paid by the barge than—or the shipper than by rail.

Exam. Taylor: Isn't that something for you to bring out in your evidence? Isn't that something, Mr. Macaulay, for you to bring out in your own evidence? You are going to take the stand or have a witness, aren't you?

Mr. Macaulay: We will have witnesses, yes.

Exam. Taylor: Isn't that something for you to bring out yourself?

[fol. 486] Mr. Macaulay: Except this statement—I think he might explain his view of it.

Exam. Taylor: He has not talked about that.

Mr. Macaulay: Except this statement: I thought he might explain his views.

Q. Mr. Tannehill, would the railroads still allow the same rates on grain arriving via lake at Buffalo from Buffalo to New York and other ports?

Mr. Cole: I object to that, Mr. Examiner. There has been not a word of testimony as to ex-lake rates from Buffalo.

Exam. Taylor: Objection sustained. Have you much more, Mr. Macaulay?

Mr. Macaulay: No. That is all.

Exam. Taylor: We will take a short recess.

(Whereupon a short recess was had.)

Exam. Taylor: All right, let us come to order. Mr. Macaulay, had you finished?

Mr. Macaulay: I have one more question I would like to ask—I will withdraw it.

Exam. Taylor: All right. Mr. Childe?

By Mr. Childe:

Q. Will you refer to your exhibit number 9, Mr. Tannehill?

A. I have it, sir.

Q. Are the rates there shown published as joint through single factor rates?

[fol. 487] A. Which rates do you mean?

Q. All of them on the exhibit.

A. Why, of course they are not, all of them on the exhibit. What is it you want to know about it?

Q. I want to know whether all the all-rail rates shown on that exhibit are published as joint through rates with a single factor?

Exam. Taylor: You mean the first column?

Mr. Childe: Yes, sir.

Mr. Day: It is shown on the exhibit if they are.

The Witness: Yes. Do you see the heading there, "Standard all rail joint through rates"?

By Mr. Childe:

Q. Are those rates in fact based on the combination of the local rates into Chicago plus the proportionals?

A. These here?

Q. Plus the proportionals beyond?

A. No, sir.

Q. Are those the rates referred to in Mr. Sperry's exhibit 13 as subject to the specific proportion shown in the right hand column of exhibit 13?

Mr. Day: I object to the question as not proper cross examination. Mr. Childe can check the other witnesses' exhibit as well as Mr. Tannehill can.

Mr. Childe: The other witness did not know in con- [fol. 488] nection with what rates his exhibit applies and he says that the Eastern lines had that information. I am asking of the only witness that the Official Lines are offering.

Exam. Taylor: The witness may answer if he knows.

Mr. Cole: Mr. Examiner, if Mr. Childe will refer to the bottom of page 2 of Mr. Sperry's exhibit he will see that that specifically has a number mark there and down at the bottom of it it says, "Proportions to Chicago of one factor through rates to Eastern Trunk Line territory" and if he will look at our exhibit number 9 it is readily apparent that our rates run to destinations within C. F. A. territory and to border territory.

Mr. Childe: How about Baltimore, New York and Boston?

Mr. Cole: The top three things, yes, that is Eastern Trunk Line, but the rest of them——

The Witness: Now, may I explain that Mr. Childe did not properly ask his question? He said, "Are all of those rates based on the local rate to Chicago plus the reshipping beyond" and I said "No."

Mr. Cole? Now we are getting it straight.

The Witness: He did not properly ask his question. I think what Mr. Childe wanted to know was as to New York, Baltimore and Philadelphia, or New York, Baltimore and Boston, but that was not what he asked.

Mr. Childe: That is not my question at the present time. [fol. 489] Will the reporter read it?

(Question read.)

The Witness: Why, I will have to get Mr. Sperry's exhibit. Now, as I understand, what you merely are asking is whether or not the rates in the last column represent the factors up to Chicago on which these through rates are based? Is that correct?

Exam. Taylor: The last column of exhibit 13.

The Witness: Is that Mr. Childe's inquiry?

By Mr. Childe:

Q. The inquiry is whether those specifics which Mr. Sperry said were proportions of the through rate are applicable in connection with the all-rail rates shown on exhibit 9 from the Illinois origin points to Trunk Line territory?

A. Oh. Now, that is different when you ask to Trunk Line territory. Those are the division of the rate, through rate that is published and apply up to Chicago; the balance East, which refers to Trunk Line and New England territory, the reshipping or proportional rate.

Q. Do those same specifics or proportions apply on the joint through rates shown on exhibit 9 all-rail to the C. F. A. destinations?

A. Not west of the terminii, no, sir.

Q. Were those proportions or specifics established as a result of negotiation between the Official and the Illinois lines or were they established by the Interstate Commerce [fol. 490] Commission?

A. Well, they have been in effect a good many years, that basis of making rates from Illinois territory and I couldn't tell you how they were arrived at, that is, I mean whether they were arrived at by the joint conferences of the lines or whether later we were instructed to publish through rates and they were made on that basis but I assume that the rates were made after conferences between the Official

and the Illinois lines. The rates on that basis have been in effect for many yearrs.

Q. I won't ask you to take the time now but can you point out to me or supply me before the hearing closes with the points shown on your exhibit 9 to which the all-rail rates are not a combination on Chicago?

A. Yes, I can do that right now. The Buffalo, Boston, New York, Baltimore are based on specifics to Chicago and the proportional rates beyond.

Mr. Day: Pittsburgh?

The Witness: Yes, Pittsburgh is in there and Wheeling, West Virginia generally. The rest of them are not.

By Mr. Childe:

Q. In your exhibit number 11 you make certain comparisons with class rates. What is the purpose of that comparison, what significance do you attach to it in this proceeding?

A. Simply to show the low level of our present rates from within our territory here from Chicago to the desti- [fol. 491] nations shown.

Q. Is it your contention,—or, rather, it is not your contention that the grain rates should be based on the class rates, as I understand you?

A. Well, I am not contending they should be a percentage of the class rate at this time but in our territory under docket 15879 the Interstate Commerce Commission found a level of class rates which was proper. They have also in several cases found that in Official territory sixth class or 27½ per cent of first was not unreasonable and, therefore, we have shown that the rates in question are considerably below sixth class.

Q. Isn't it also true that from points in Illinois to C. F. A. and Eastern destinations you have class rates established which are in some instances lower, taking sixth class, than the existing rates on grain?

Mr. Bradford: Mr. Examiner, I wonder if the counsel will tell what part of Illinois he is talking about?

The Witness: In the first place, the gentlemen's question is incorrect. He asked me whether class rates within Illinois are the same as in C. F. A. territory?

Exam. Taylor: Is that all, Mr. Childe:

Mr. Childe: I wondered if the witness could tell me to what destinations in C. F. A. territory the sixth class rate today from Northern Illinois,—take Morris as representative,—are lower than the present combination of grain rates?

The Witness: No, I have no figures with me.

[fol. 492] Mr. Childe: I think that is all.

Exam. Taylor: Any other cross examination of this witness?

Mr. Cole: May I have some redirect?

Exam. Taylor: Yes.

Redirect examination.

By Mr. Cole:

Q. Mr. Tannehill, on your cross you were asked a number of questions by several of the cross examiners having to do with the construction and understandings and interpretations of these various rules covered by your exhibits numbers 1 and 2. I want to ask you if the information that you gave in answer to those questions and your understanding of any of those rules or influences or interpretations was secured from anything, any place except that phraseology carried in these exhibits 1 and 2 and except the language as carried in those tariffs which are exemplified by exhibits 1 and 2?

A. No.

Q. It is all from those tariffs as carried there?

A. That is correct.

Q. In connection with your answers to some questions involving these barge charges, you said at several times that the barge charges were not filed, and, if I remember correctly, several of the parties took exception to that, indicating that in certain instances some of the barge rates might be on file. Have you made an investigation covering the handling via water, the Illinois River, from these Illinois points to Chicago?

[fol. 493] A. I have, some.

Q. Is all of that grain that moves via the river from these origins in Illinois to Chicago moved by one barge line?

A. No. I am quite certain that it is not.

Q. Do you know of any regulation that would limit the handling of grain on the Illinois River from the origin ter-

ritory we have under discussion to Chicago to any one barge company or to any one kind of barge or is it your understanding from your investigation that anything that would float on the water could handle the grain from the origin to Chicago?

A. Well, it must be anything that will float on the water from some of the things I saw them loading grain in down at Morris and Ottawa.

Mr. Cole: That is all I have.

Mr. Day: And that is true whether they are actual transportation barge lines or private barges?

A. That is true.

Q. All the same?

Q. That is true.

Q. Or of some grain shipper?

A. Our investigation,—I was down not very long ago along the river there. One man says, "Well, we own the barge and we hire somebody," I forget who it was, "to push it up when we get it loaded", and another said the barge company owned it and said they know when they wanted it and others said they load all the barges and the Federal [fol. 494] Barge Line handles the barges, as they said, on port to port rates. Once I called up their office and they were not very anxious, when they knew who I was, to give those to me, to give me the port to port rates. Probably Mr. Oliphant was not here.

Mr. Oliphant: We will be very glad to give you any rates we have, Mr. Tannehill.

Exam. Taylor: Is that all? Witness excused. Next witness.

(Witness excused.)

Mr. Enoch: I call Mr. Rigg.

E. Rigg was thereupon sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Your name is Mr. E. Rigg?

A. Yes, sir.

Q. You are with the Rock Island?
A. Yes, sir.
Q. Located in Chicago?
A. Yes, sir.
Q. In the traffic department of that company?
A. Yes, sir.
Q. How long have you been in the traffic department?
A. 33 years.
Q. And during that time what has your experience been generally in connection with rate and traffic matters?
[fol. 495] A. Yes, the last twenty years altogether in rate and traffic matters.
Q. During that period have you had to do with grain rates and grain traffic?
A. Generally, yes, sir.
Q. Over the entire period?
A. Yes, sir.
Q. Have you distributed an exhibit here which you propose to submit for the record in this case?
A. Yes, sir, exhibit 14 of two pages.

Mr. Enoch: I will ask that that be marked for identification exhibit number 14.

(Exhibit 14, Witness Rigg, marked for identification.)

Q. Are the facts purporting to be set out in that exhibit correct?
A. Yes, sir, to the best of my knowledge and belief.
Q. Have you a statement to make in connection with this exhibit?
A. Yes, sir.
Q. Proceed.
A. The C. R. I. & P. Railway appears in this proceeding as an intervener in support of the respondent's proposal to discontinue the application of the reshipping or proportional rates on grain, or the products thereof, from Chicago and other markets to points in Official territory, or points beyond, basing on Official territory gateways when grain is [fol. 496] transported to Chicago, or the other reshipping or proportional rate points here involved, by unregulated barge carriers whose charges are not subject to regulation by the Interstate Commerce Commission. It is of vital importance to the C. R. I. & P. Railway, and to the rail grain elevators served by the C. R. I. & P. Railway, that

the Eastern railroads discontinue immediately the existing practice of applying their proportional or reshipping rates on grain transported to Chicago, and other markets, by unregulated barges. The existing practice of the Eastern lines in charging a higher rate on grain, or the products thereof, from Chicago to points in Official territory when the grain is handled into Chicago by the C. R. I. & P. from its Illinois points than such Eastern railroads charge from Chicago to the same territory on grain transported to Chicago from the same Illinois origins by unregulated barges, results in unjust discrimination against the C. R. I. & P. Railway and the rail grain elevators which the C. R. I. & P. serve.

The Illinois Deep Waterway from Peoria to Chicago was opened to navigation during the early part of the year 1933. In 1933 the C. R. I. & P., realizing that the corn traffic which it had heretofore handled to Chicago from Illinois points contiguous to the Illinois Deep Waterway would be vulnerable to transportation by river barges, established on corn, carloads, to Chicago intrastate rates from stations on its line in Illinois immediately west of Chicago and as far west [fol. 497] as Utica, Illinois, on a basis substantially lower than the interstate rates. These low intrastate rates carried a restriction that no transit privileges would be permitted in connection therewith. The purpose of this method of publication was with the idea of giving no more favorable application to the rail rates than an unregulated barge would be able to give its rates. That is, we considered and treated the unregulated barge competition from our Illinois points to Chicago as a purely local one and one not involving interstate commerce except to the extent that any grain which arrived at Chicago via unregulated barges and which might be reforwarded by rail to interstate points, we concluded that such grain would be considered as having originated locally at Chicago and that local rates from Chicago would be applied on such traffic. To state the matter in another way, it was assumed by us that any grain handled by an unregulated barge from landings on the Illinois Deep Waterway to Chicago that the grain would, after its arrival at Chicago, be good only for local consumption in Chicago or the grain could be reshipped by boat over Lake Michigan and if the corn which arrives at Chicago by an unregulated barge was reforwarded from Chi-

cago via rail to interstate destinations, it would pay the full local rates from Chicago to the interstate destination. The low non-transit intrastate rates established by the C. R. I. & P. from certain of its Illinois points to Chicago only apply on grain which was or is consumed locally at Chicago or reforwarded by lake boats to points east of Chi- [fol. 498] cago. In 1933 and 1934 there was but a small amount of corn transported by barges operating on the Illinois Deep Waterway from Illinois origins to Chicago. In 1935 the movement by barge substantially increased, particularly from Ottawa and Morris, Illinois. Since 1935 the movement by barge has steadily increased with a corresponding heavy reduction in the movement via the C. R. I. & P. from its origins in Illinois where the competition with the unregulated barge carriers, combined with trucks, is most acute. Exhibit 14, page 1, shows the movement of carload corn via the C. R. I & P. from its stations in Illinois Joliet to Utica, inclusive, to Chicago, for years 1935 to 1938 inclusive including first eleven months of 1939. Please observe the heavy reduction in the movement of corn from Morris to Chicago via the C. R. I. & P for the first eleven months of the year 1939, the C. R. I. & P. handling only 44 cars, as compared with the movement via rail for previous years from Morris which amounted in 1936 to 802 cars. At Seneca, the movement has considerably decreased. During the latter part of this summer a river elevator was constructed on the bank of the Illinois River at Seneca and grain is trucked from the farms to this river elevator for movement via barge beyond. Prior to the construction of this river elevator at Seneca grain was trucked from the territory in the vicinity of Seneca to Morris for movement via barge beyond. From Ottawa, Illinois the movement via the C. R. I. & P. has considerably decreased. The Norris [fol. 499] Grain Company operate at Ottawa an elevator on the banks of the deep waterway and this elevator has drawn corn from C. R. I. & P. territory as far west as Utica, the grain being trucked to the river elevator and moved via barge beyond. Our movement out of Utica has considerably decreased, the grain which has heretofore moved via the C. R. I. & P. being trucked to Ottawa and being shipped by barge beyond. While this statement does not show the movement from La Salle, Illinois, it is important to here state that a river elevator was constructed this

fall by the Continental Grain Company at La Salle and that elevator is now drawing grain from our territory in the vicinity of La Salle for movement via barge beyond. Likewise on our line south of Bureau to Peoria, corn is now moving via barge to Chicago from Henry, Illinois and territory in that vicinity, all of which corn heretofore moved via the C. R. I. & P. Since the movement of corn fluctuates with production, page 2 of exhibit 14 shows the corn production by years, 1934 to 1938, in the counties in which the C. R. I. & P. points shown on page 1 of exhibit 14 are located. Pages 1 and 2 of this exhibit, when compared with statistics which will be submitted later showing the movement of corn via the deep waterway to Chicago, speak for themselves. Insofar as we can determine through daily checks of the barges that are being loaded with corn by the river elevators at Morris and Ottawa, there has been moved to Chicago by barge from Morris and Ottawa combined for the first eleven months of this year over [fol. 500] 9,000,000 bushels of corn or the equivalent of over 6,000 cars at 1500 bushels to the car. Notwithstanding the low non-transit state rates which were established by the C. R. I. & P from its Illinois points to Chicago to meet what the C. R. I. & P. considered to be a local competitive situation between these Illinois points and Chicago, we continue to lose the corn traffic in increasing volume to the unregulated barges and having regard for the additional elevators that are being constructed along the Illinois Deep Waterway we can expect in the very near future, unless this unfair rate situation against the Illinois railroads and the rail grain elevators located on the Illinois railroads is immediately corrected, to lose practically all of our corn to the unregulated barge lines with a consequent drying up or abandonment of the rail grain elevator facilities leaving the grain producers in this particular Illinois territory dependent entirely upon the river elevators and the unregulated barges to handle their grain. It is our conviction that the practice of the Eastern lines in applying lower rates from Chicago on grain, and the products thereof, when destined to points in Official territory or points basing thereon on grain arriving at Chicago via unregulated barge carriers from the Illinois territory than they apply on grain transported into Chicago from the same Illinois

territory by the C. R. I. & P. has nullified our effort to meet the local unregulated barge competition from our Illinois points to Chicago and consequently resulted in the [fol. 501] traffic being diverted from the C. R. I. & P. to the barges and that such diversion of traffic from the C. R. I. & P. Railway will continue to increase in volume until the practice herein under investigation is discontinued.

Q. Mr. Rigg, the Rock Island has a line of railroad extending in an easterly and westerly direction across the State of Illinois with a western terminus of the Illinois division at Rock Island, Illinois and the eastern terminus at Chicago, is that right?

A. Yes, sir.

Q. Now, is there a line connecting with its main line extending from Bureau, a point on the main line, to Peoria, Illinois?

A. Yes, sir.

Q. Can you name the communities served by the Rock Island between Peoria and Chicago that have a population, say, from two, three, five or eight thousand people or more, beginning at Peoria?

A. Peoria, Chillicothe, Henry, La Salle, Utica,—although there is no grain elevator on the river at Utica,—Ottawa, Marseilles, Seneca, Morris, Joliet.

Q. Name the points included in those you have just named that are served by the Illinois Waterway?

A. That is to say, for grain loading?

Q. Yes.

A. Well, grain is moving today by barge along the Illinois [fol. 502] Waterway to Chicago from Peoria, Henry, Illinois—although there is no elevator that I know of at Henry at this time, but they are shipping today grain by barge from that point,—La Salle and Ottawa, Seneca and Morris, Illinois.

Q. Did you ever use this expression in referring to these rates that you reduced here in 1935 and subsequently thereto, as "lake locals", or was that a new expression to you?

A. No, I have never used it as "lake locals." In fact, I understand the grain trade use- that statement but in railroad parlance these rates that we published, we call it the low non-transit rates on grain from Illinois points to Chicago because they are not confined to lake transporta-

tion. They are good for local consumption into Chicago on state traffic.

Mr. Enoch: That is all.

Exam. Taylor: Any questions by counsel? Any questions by counsel for the shippers? Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Mr. Rigg, does your line participate in the publication of the rates here under investigation?

A. No. The rates—not as line haul carrier. On reshipping rates from Chicago, for example, if that is what you are speaking of, to Eastern points we do not participate as a line haul carrier in those rates. We do participate as a switching carrier, of course, switching from the elevators to the Eastern lines, but only as an agent for the line haul carrier.

[fol. 503] Q. Is it your opinion that if these increased rates were today permitted to become effective it would reduce the volume of grain moving by barge on the Illinois waterways?

A. We hope that it will.

Q. Is that your interest in the proceeding?

A. Well, our interest in the proceeding, of course, is to recover and prevent further diversion of the grain traffic from our line to the barge lines; also, which is incidental to the proposition and probably important, is to remove the unjust discrimination which I have referred to.

Q. The proposition that you hope the movement by barge will be lessened?

A. Yes, sir.

Q. You think this proposal will have that result?

A. That is our earnest conviction, yes, sir.

Q. You mentioned that some of the elevators served by your line were hurt by the present adjustment. How is that, Mr. Rigg?

A. Well, I have had complaints,—I have been at this thing now for five years,—and starting at Minooka, Illinois,—Minooka is the first point east of Morris,—Minooka, Illinois, the elevator operator at that point says that he is losing money on every car of grain that he ships by rail

today and that he is only in existence there by reason of his coal and lumber business. I don't know whether he will testify or not. At Morris, Illinois our heaviest ship-[fol. 504] per there has been the Quaker Oats Company. They left us in 1939. Prior to that they shipped under our intrastate rates to Chicago but along about April the 19th the Quaker Oats Company advised me that they would not use our new state rates to Chicago because those rates were not as advantageous after the grain got to Chicago as what it would be if that grain had arrived at Chicago by boat or barge, in that the grain arriving at Chicago by barge would be good for transit under reshipping rates to Eastern points or to Southern destinations or by lake or for local consumption whereas our rates, our grain rates were confined to local consumption or in going out by lake, so that our rates were much less available at Chicago here than on the grain arriving by barge.

Q. Now, Mr. Rigg, pardon me. The question is about these local elevator people being hurt.

A. Well, I am just giving you how they are being hurt now. At Minooka here, I have told you about the complaints from them.

Q. They could not operate and make a profit——

A. At Seneca——

Q. —if they didn't have coal and lumber.

Mr. Enoch: Don't you want to hear what Mr. Rigg has to say about it?

Mr. Belnap: Yes.

The Witness: Now, at Seneca the elevator people,—two [fol. 505] of them on that one, McCormick and Hogan,—they tell us that unless we establish a rate of 3 cents per 100 pounds from Seneca to Chicago and that that rate has the same transit advantages at Chicago as the barge grain, that they will at some time in the future have to fold up or just be an accessory or a facility for handling barge grain. In other words, they will simply buy and sell barge grain.

Q. Where is the hurt, that is what I am trying to get to? That is their business, isn't it, buying and selling grain?

A. Yes, but I am advising now on their hurt, on what they have told me.

Q. Yes.

A. They won't continue in business down there. Now, of course, as long as the river elevator will continue to buy

corn and the rail elevator men continue buying and selling grain to be shipped to the river elevator, why, then, of course, he can continue in business at the usual two cents per bushel commission but just as soon as the river elevator, I presume, finds that he can get this grain without doing business or buying through a rail elevator then the rail elevator man is through, they will buy it direct from the farmers.

Q. That is the present day situation?

A. Now, Finnegan at Morris, as I understand it, is buying direct from the farmers.

Q. That is the present day situation, you are talking [fol. 505a] about an elevator on your line who is hurt by the fact that when the ex-barge grain gets to Chicago it can move east on the proportional or reshipping rates. I am just trying to identify the hurt from that showing and I don't understand you have explained to me where the hurt is yet.

A. Well, to the extent that this rail elevator shipper has to depend on the rail transportation via the Rock Island to Chicago he will be at a disadvantage in doing business to Eastern territory by a rail shipment out of Chicago so long as the barges,—as grain arriving in Chicago by barge can do business in Eastern territory.

Q. Well, how?

A. To the extent that his profits as a rail elevator man may be reduced.

Q. What reduces it?

A. I can't answer that question.

Q. Thank you.

A. Of course, that does not lessen my direct statement to the effect that the practice of the Eastern lines is unjustly discriminatory against the Rock Island Railroad.

Q. I didn't ask you about that.

A. That remains in the record. These grain people will be on here and can give you the rest of the story.

Q. So far as you are concerned you don't know how they are hurt?

A. No.

[fol. 506] Mr. Belnap: Thank you.

The Witness: Except from what they have told me, that is all, that they have got to have this same basis out of Chicago as the barges have.

By Mr. Root:

Q. Mr. Rigg, did I understand you correctly that the first intrastate rate was established in 1935?

A. In 1933 we put it in.

Q. What was the rate at that time?

A. Why, we made a rate from Morris, Illinois to Chicago, for example, a state rate of 6 cents a hundred.

Q. When did that go into effect?

A. It was in the year 1933.

Q. Well, has it been continuous since that time?

A. No, that rate carried an expiration date, it was an experimental rate. We were experimenting with the situation and I haven't got the exact dates here but it continued in effect off and on until the close of the year 1937. And then after 1937 the rate from Morris to Chicago was made 5 cents intrastate and that applied as a maximum from intermediate points on intrastate traffic. On complaint of certain elevator shippers located west of Morris the Illinois Commerce Commission found that that 5 cent rate was prejudicial to the shippers west of Morris and preferential to Morris and ordered the undue prejudice removed and we removed it by cancelling the 5 cent rate and getting out of the business, having nothing left except the interstate [fol. 507] rate of 9½ cents from Morris to Chicago and then we lost so much grain from that territory to Chicago we decided on April 19, 1938 to put in a new state adjustment from our Illinois points as far west as Sheffield, Illinois to Chicago to meet this barge situation, trucks and barges combined, to Chicago. Those rates are still in effect.

Mr. Brown: Mr. Rigg, you said "1938". Didn't you mean 1939?

The Witness: I should have said 1939. April 19, 1939, and those rates are published to expire June 30, 1940.

By Mr. Root:

Q. When that rate went into effect in 1933 that was a short rate, wasn't it, it was effective for a short time?

A. No, that rate carried an expiration date, as I recall it in those days, of December 31st, 1933 or 1934, but we continued to extend that expiration date up to probably to, in one instance, where it was not extended,—but up till December 31, 1937 that rate was substantially continued in effect except for a period in the winter. We assumed that

the navigation on the Illinois Deep Waterway would be closed but after letting the rate go out we found that they are not affected and instead of the river being frozen up it was very much open because of the current being taken care of by the locks. Whenever it started to freeze they poured water into the locks through the channel and I understand in that way they kept it open all year.

[fol. 508] Q. Do you know whether or not the interstate rates put into effect by the Alton, Santa Fe and perhaps Burlington went into effect about the same time as yours or at a later time?

A. Do you mean the last ones?

Q. When did they first start establishing an interstate rate?

A. I think when we put in our rates in 1933 I am quite sure that the other lines met our competition cross country.

Q. At whose request did you put in those rates?

A. At whose request? You mean from Rock Island points?

Mr. Enoch: I don't think that is a question——

Mr. Root: Yes.

Exam. Taylor: Wait a minute.

Mr. Enoch: I don't think that is going to help the Commission solve the questions at issue here.

Mr. Root: I would like to say here that many elevators requested the Rock Island and other roads to give them a rate at which they could compete and it was only after repeated attempts that that was done.

Exam. Taylor: Witness may answer if he knows.

The Witness: I stated in my direct testimony, Mr. Examiner, that the adjustment which we made in 1933 was a voluntary adjustment. It was based on our own damage, it was based on the experience of other railroads, that when this waterway was opened that we were going to be up against competition.

By Mr. Root:

Q. Was Mr. Allen of the Square Deal Grain Company [fol. 509] over in your office in company with other men to request a reduction in rates at that time?

A. I talked with Mr. Allen along in 1935 or 1936 in his office at Morris and at that time he indicated that a

rate of 6 cents which we had in effect was no good and would not move the business. Now, prior to 1933,—I just can't recall the facts whether he was in or not. We certainly would not reduce any rates prior to 1933 with no competition from that territory. I appreciate we had competition from Morris when the river was opened from Morris west towards Peoria, where the grain was transported prior to 1932 by barge southbound but it did not come into Chicago because the channel was not opened till 1933 for movement to Chicago.

Q. Why is this grain shipped over the waterways now from those towns rather than going over the Rock Island?

A. Well, they have got an advantage in rates here so far as the corn traffic is concerned over the rail lines.

Q. As a matter of fact, it is cheaper transportation, isn't it?

A. No, I am not going to admit that point.

Mr. Enoch: Just a moment. Now, let's see what you mean by "cheaper transportation." You mean to whom,—the public? Do you mean to the public or to the individual user of the transportation?

Mr. Root: It costs you less to transport grain from Morris to Chicago by barge than it does by rail.

[fol. 510] Mr. Enoch: You mean to the individual?

Mr. Root: To the man that ships it.

Mr. Enoch: But not to the public. You don't mean that, do you?

Mr. Root: Sure. Of course the public uses the waterway. It is there for everybody to use. The Rock Island can use it if they want to.

Mr. Enoch: I am sure you don't mean it is cheaper for the public to use it.

Mr. Root: You may prove it; I don't know.

Exam. Taylor: Is that all you have, Mr. Root?

Mr. Root: That is all I have.

Exam. Taylor: Any more questions of this witness?

By Mr. Macaulay:

Q. You mentioned that you put the six cent rate into effect in 1933 at Morris?

A. Yes.

Q. What grain was being shipped out of Morris by barge at that time, do you know?

A. As I recall it there was a southbound movement of grain from Morris to Chicago and points south, mostly in the Mississippi Valley.

Q. Did that justify changing the rate then to Chicago to six cents if there was a southbound movement?

A. The channel was opened up to Chicago in 1933 and in 1933 was when we felt that unless we did something [fol. 511] with the local situation from Morris to Chicago that we would lose our grain, so we, therefore, knowing we would have barge competition which later developed, we established a rate of 6 cents from Morris to Chicago. Now, as a matter of fact the Federal Barge Line in 1933 published from Morris to Chicago a rate 80 per cent of our 6 cent rate, which made it 4.8 cents, but the Federal Barge have folded up on this traffic. They could not stay in it, as I understand it.

Q. Do you know of any elevator that was located in Morris on the river in 1933 that was shipping by barge?

A. Well, I don't know whether Finnegan was over there at Pattonville or not, across the river from Morris: on the other side.

Q. In Pattonville?

A. I don't know where he was. I know there was grain moving south then from Lacon and Henry. As I recall, this grain was moving out of Morris to points south prior to 1933.

Q. Wasn't it a fact that Mr. Finnegan did not erect his elevator until sometime in 1934 and did not ship until that time?

A. No. As I recall it there was grain moving out of that territory down the river southbound, not eastbound, prior to 1933. I may be mistaken now.

Q. You mentioned about shipments that you were being deprived of because of the trucks. When was the first that you began to notice the influence of the trucks on the tonnage that you handled?

[fol. 512] A. Well, as our figures show here when the situation got real bad was—my exhibit number 14, the exhibit speaks for itself. You take 1937, Minooka, only 107 cars. Morris did pretty well. The Quaker Oats were staying with us then.

Q. What year was that, sir?

A. 1937.

Q. In 1933 what was the condition compared with 1932 or 1931?

A. In 1933, as I stated in my direct testimony we did not commence to really feel this barge competition in a big way until along about 1935.

Q. Then you cut this rate not on account of competition but in anticipation of competition?

A. We cut the rate in 1933, we knew there would be barges going in there, and I stated in my direct we held pretty well against the barges in 1933 and 1934 but in 1935 we commenced to lose ground and we have lost ground ever since.

Q. Are you prepared to state whether or not the 5 cent rate to Chicago is compensatory to the Rock Island?

A. Whether the rate is compensatory?

Q. Whether it equals your cost?

A. The Illinois Commerce Commission has already found that a rate of 5 cents was not unreasonable.

Q. Pardon me, I did not hear. Was not a reasonable rate?

A. Was not unreasonable.

Q. Was not unreasonable. But you cannot state whether [fol. 513] or not it covers your costs?

A. I don't know what it costs to handle any traffic, that is to say, any individual traffic, railroad traffic. I can make a guess at it; I know whether we are making money or not.

Q. Do you know whether or not there is any likelihood that the tariffs will be extended beyond June 30, 1940 on this interstate billing?

A. If it is within the power of the CRI&P Railway, why, those tariffs will be extended. In other words, we are going to continue to meet our competitions to the extent that we can and I say within our power. There are other powers, of course, in connection with this matter, such as the regulatory bodies and others.

Q. Do you anticipate that if your reshipping rates are denied barge grain that there will be any increase in the amount of grain that will be trucked to Chicago?

A. It is our earnest conviction that that is one of the things, if not the most important thing now, that is causing us to lose so much of this grain to the barges, which is in effect clarified by our rates of April 19, 1939 in an effort to meet this barge competition. The answer is yes.

Q. In other words, the trucks won't take anything away?

A. The trucks do not truck anything direct from our Illinois points to the Chicago territory; they are trucking from our Illinois points to these elevators, where it is moving by barge.

[fol. 514] Mr. Macaulay: That is all.

By Mr. Root:

Q. Would you be surprised to know that the gentleman in Morris spends his full time buying grain direct from the farmers and that it is trucked direct to the terminal elevators in Chicago?

A. I was down there two weeks ago, three weeks ago and saw Mr. Robinson, or called on him, of the Allied Grain Company there, he runs the river elevator at Morris, and he brought corn from I think as far west as Ottawa, and while at the Morris elevator I saw probably half a dozen trucks waiting to be unloaded with grain at the river elevator at Morris and those trucks, some of them came, at least two of them came from a point on the Burlington probably fifteen or twenty miles north of Morris, from Somonauk or some point like that, and traveling almost right out down to Seneca there was grain being trucked and passing us all the way, or corn being trucked all the way to the river elevator at Morris. I can't see that there is any advantage in trucking the grain from that territory to Chicago by truck all the way when the barge is willing to handle it, as I understand it from such information as I can get, at a towing charge from Morris to Chicago of a cent a bushel.

By Mr. Macaulay:

Q. My question was whether or not if the reshipping rates were denied barge grain, whether, in your opinion, there would be any increase in the movement of grain which would then be trucked to Chicago, the barge grain being eliminated?

[fol. 515] A. As I stated to you, we are going to meet our competition to that territory so far as we have the power to do so and that meeting that competition refers to any kind of competition, whether it be by barge or truck and my answer is "No", because it is easier to meet the truck situation than probably this barge situation.

Exam. Taylor: Is that all your questions, Mr. Macaulay?

Mr. Macaulay: Yes.

Exam. Taylor: Mr. Childe?

Mr. Childe: No questions.

Exam. Taylor: Any further cross-examination of this witness? Anything on redirect?

Mr. Glover: I want to ask him one question.

Q. As I understand your testimony, both on direct and cross, it applied only to whole grain?

A. Well, my testimony shows the interest of the Rock Island in this case and it is primarily, of course, in the territory that I am speaking of on the corn but so far as the testimony goes, the statement that the situation discriminates unjustly against the Rock Island, that is to say, the eastern rates applying on barge grain, applies equally with respect to corn or the products of corn or anything which may take the grain or grain products rates, because the same principle is true of corn east of Chicago as is likewise true of any article taking the grain or grain products rate.

Q. Yes, but I mean your particular testimony that you [fol. 516] put in on direct and cross applied to the whole corn, did it not?

A. It goes to the whole thing, to the whole eastern practice. We are interested, for example, in hauling this ground alfalfa from Kansas City to Chicago. Now, I think that is what you are interested in. We are interested in now seeing that they stop the practice by rail and not by barge.

Q. Now, will you answer the question? I asked you whether or not your testimony on direct and cross up to my question, whether that was directed at the whole grain?

A. No.

Q. It applied to products, isn't that right?

A. It applies to all of it, yes, sir.

Q. And your testimony of this trucking applied to products, too, into Chicago?

A. Well, my testimony with respect to trucking is incidental to the main issue here. I was asked some questions about it and, naturally, the traffic that is trucked to Chicago is whole grain.

Q. That is what you are talking about?

A. In my answer on cross-examination, where I spoke about trucking it, there is a trucking of the whole grain to the river elevators or the whole grain to Chicago.

Q. So your testimony referred to the whole grain, as I understand it?

A. My cross-examination referred to the whole grain.

Q. And to the extent your testimony on direct, where you stated "other than corn", you meant, of course,—and [fol. 517] where you limited it to corn, it was applicable only to corn?

A. Where I limited it to corn was applicable only to corn, the whole corn into Chicago, but the testimony shows the effect on the CRI&P whole grain movement to Chicago, that is to say, the effect on that movement by reason of the practice of the eastern lines applying their reshipping rates on barge grain. Now, their reshipping rates that they apply on this whole grain that is brought into Chicago apply on the grain or the product of grain. Now, my testimony with respect to this unjust discrimination created by the eastern lines' tariff, this practice which they have, applies with equal force to corn from Illinois or wheat from the Missouri River, corn from Iowa or ground alfalfa or hay products from points in Kansas City or any states west thereof.

Q. So that the testimony that you gave as to rates via the barge line or your competition with the barge line applied to what,—that is, from Seneca and Morris and those other points? What competition did you have in mind there?

A. Relating to the immediate effect that I testified to here, but on our traffic I relate to corn traffic from our Illinois points to Chicago.

Q. So your testimony is mainly as to corn into Chicago?

A. Oh, no.

Q. Why not?

A. Well, I think it will speak for itself.

Mr. Glover: All right.

[fol. 518] By Mr. Bradford:

Q. Mr. Riggs, in reply to Mr. Macaulay's question I believe you stated you did not see why a man would truck grain to Chicago when he could truck to the river elevator. I would like to ask you if that answer was based on the fact that the barge line grain would have the benefit of this

reshipping rate and the trucks would pay the full local rate going out by rail?

A. That is one advantage, yes, sir.

Mr. Bradford: That is all.

Exam. Taylor: Anything further on that side? Redirect?

Redirect examination.

By Mr. Enoch:

Q. Mr. Rigg, Mr. Belnap endeavored to get you to say that your sole interest in this proceeding was to reduce the movement by barge and I would like to ask you whether or not a greater interest than that is not that the Rock Island, the railroad which you represent, and other railroads here will handle more than they do rather than to beat the barge line out of any business that they might have?

A. The answer to that is "Yes", and, of course, it goes a great deal further than that, Mr. Enoch, as I stated in my direct testimony. If we continue to lose our grain traffic in Illinois, corn traffic to the barge line, and there is no corn traffic left to be handled through the rail facilities, why, eventually, in my opinion, the rail facility will dry up and some day when there is a possibility of a good corn movement by rail there will be no facility with which to handle [fol. 519] that grain through to load it into cars. There is quite an investment down there in those facilities.

Q. Now, how is that territory served by the Rock Island and these other railroads in Western Illinois? Take towns like Geneseo on the Rock Island, and Bureau County, and the C. B. & Q. and these other railroads as to being a heavy producing territory of corn?

A. Well, practically all of the counties along the Rock Island main line,—in fact, all of the Rock Island lines in Illinois are surrounded by very heavy corn producing territory all the way to the Mississippi River and right on through to Omaha, as far as that goes, and through Iowa.

Q. Now, you as a representative of the Rock Island are interested in handling corn from those points in Illinois beyond this waterway, are you not?

A. Yes, sir.

Q. And the other railroads are interested in the same competition?

A. Yes, sir.

Q. Do you recall when it was that you first had experience with this barge line business down the Illinois River to St. Louis and Memphis on corn?

A. Well, from our points the real competition that we have there, or the loss of grain which we suffered was in the vicinity of Lacon and Henry and there was some grain [fol. 520] being handled out of that territory and that was, as I recall it, prior to 1933.

Q. That is right. Now, it was that experience, was it not, that led you to believe that if anything was to be done in connection with this eastbound movement it ought to be done right at the time that the movement was about to start?

A. That is right. It not only led me but it led our entire management to that conclusion.

Mr. Enoch: I offer exhibit number 14 in evidence.

Exam. Taylor: It will be received.

(Exhibit 14, Witness Rigg, received in evidence.)

Mr. Cole: I have one question.

Q. Mr. Rigg, do you have elevators on your line in Illinois that are only rail elevators, that do not have any water immediately adjacent to the elevator?

A. Yes, sir. Take at Minooka, Illinois, of course the rail elevator there is rail locked. In other words, the water is not available. At Morris the Quaker Oats Company have an elevator and that is served only by rail facilities. The Square Deal Grain Company have an elevator which is served only by rail facilities.

Exam. Taylor: At Morris, too?

The Witness: At Morris. Now, the Allied Cooperative Elevator, which is on the river, that is to say, it is a river elevator, we have a track into that elevator but very little grain,—in fact, the only grain, as I recall, that we had out [fol. 521] of there this year was a few cars during the time that the Commodity Credit Corporation released quite a lot of grain in the vicinity of Morris and there wasn't sufficient barges available to handle the grain and we got a few cars of grain out of Morris to Chicago this year because of that condition.

Q. Are you familiar with the Square Deal elevator at Morris?

A. Well, only to the extent that it is served by a Rock Island track.

Q. Do you know what use is being made of that elevator?

A. The last time I was in Morris I made inquiry as to what was stored in there and I was told that the Square Deal Company had government grain storage in that elevator under seal.

Q. Have you had any tonnage out of that elevator while this storage is in there under seal from the government?

A. We haven't had any out of there lately. There was one period, it was along in August or September, when something happened down there, when the Commodity Credit Corporation let loose quite a lot of corn which was under seal to Chicago and that caused a little movement from Morris. As I show here the entire year there was 44 cars. I think there were 19 cars, if I remember right, that we got from Morris under that particular release of corn from seal during September or August.

Q. Now, if this rail rate from your rail elevators in Illinois that do not have the water outlets that you referred to just previously continues and if the water rate continues [fol. 522] from those elevators that have the water outlet, how will that continued difference of application of charges affect those elevators that are now on your line that only have a rail outlet for their grain?

A. Well, this statement that I have shown of our tonnage movement here, our business is decreasing and that is because the rail elevator business is decreasing.

Mr. Macaulay: What is that last answer?

The Witness: I say that the business off our line is decreasing because the business in the rail elevator served by our rail line is decreasing.

Mr. Macaulay: The business of that elevator for rail shipment?

The Witness: Yes, for rail shipment.

Mr. Macaulay: That is all you are talking about?

The Witness: That is all I am talking about, Mr. Macaulay. Now, the other angles of this thing, as to what extent that rail elevator may be buying and selling grain for the river elevator on a commission basis, I know nothing, or in

handling grain through that elevator but simply handling it direct by truck from the farm to the elevator I cannot tell, but I do know this that eventually, as far as the railroad is concerned, at least if this particular condition continues, that we probably will be handling no grain from that territory to Chicago.

By Mr. Enoch:

Q. Well, are you through, Mr. Rigg?
[fol. 523] A. Yes.

By Mr. Cole:

Q. Well, Mr. Rigg, the grain elevator that is on the rail line and has no outlet by water and this new handling that you referred to, that that elevator company may be buying grain for direct delivery to the river, do I understand you to indicate that there is no movement whatever of the grain through the elevator on facilities that are located only on the railroad track? Are people putting grain up in the railroad elevator?

A. That is true in some cases.

Q. What do you mean that is true, which?

A. It is true, for example, as to the Quaker Oats at Morris, Illinois.

Q. What is true?

A. Why, it is true that the farmer, for example, will—that the Quaker Oats Company will buy grain at Morris, Illinois and that grain will be trucked from the farm to the Quaker Oats Company's elevator served only by rail facilities on our line at Morris. Now, then, the Quaker Oats will truck that grain from our elevator, or the elevator on our line to the river elevator of Finnegan Bros. across the river at Morris. Now, then, that stuff will be barged into Chicago. Now, at Seneca, for example, the two grain dealers there both buy grain from the farmer which is carried into their elevator by the farmer and that stuff generally is shipped out by rail. They also buy grain direct from the farmer which never sees their elevator but instead [fol. 524] moves direct to the river elevator for shipment via barge to Chicago.

Mr. Cole: That is all, thank you.

By Mr. Enoch:

Q. Well, now, Mr. Rigg, to the extent that the rail elevator does business with the river elevator it is going out of business, isn't it?

A. They tell me they are; that is the best I can say.

Q. Well, now, take your rail elevator at Seneca, Illinois: If the man running that elevator is buying the grain from the farmer for the river elevator does the grain that he buys go through the rail elevator or does the farmer take it direct to the river elevator?

A. What point was that?

Q. Seneca.

A. That particular grain that he buys for the river elevator does not move through the rail elevator at Seneca.

Q. Isn't it true that all of your rail elevators except the Quaker Oats elevator, who happen to be a large merchandiser at Morris,—isn't that true with all of them?

A. No, this is quite a combination. Now, let me give you another situation.

Mr. Belnap: Mr. Examiner, I think counsel is trying to tell him something and is not asking him anything.

The Witness: I want to tell you one situation at Morris, if I may. Finnegan Bros. or the Finnegan Company at Morris have a rail elevator on the Rock Island which is used [fol. 525] for storing grain and that grain is trucked from the elevator to their river elevator of Finnegan's for shipment by barge beyond but any grain they have——

By Mr. Enoch:

Q. How many points have you got on the Rock Island Railroad down in Illinois where you have a rail elevator man getting a commission for buying corn from the farmers for a water elevator man where that grain goes through the country elevator before it goes through the elevator on the water?

A. None of them.

Q. So that when Mr. Belnap jumped at you a while ago you did not mean to change the answer which caused him to jump, did you?

A. No, I was trying to differentiate. The way the question has been put to me, you finally cleared it up on your last question. The question that was asked, the way the

questions were put to me were, even if this grain moves from the country which the rail elevator man might buy for the river elevator, does that move through the river elevator—or the rail elevator? And the answer is "No".

Mr. Belnap: The answer is "no" to what?

The Witness: That it don't move through the rail elevator.

Mr. Enoch: Just a moment. I think that is clear on the record.

Exam. Taylor: Does that finish your redirect?

Mr. Enoch: Yes.

Exam. Taylor: Anything on recross?

[fol. 526] Mr. Belnap: Yes, I have a question.

Recross-examination.

By Mr. Belnap:

Q. What have you now cleared up, Mr. Rigg? I am lost on the road.

Mr. Enoch: I object to that kind of cross examination.

Mr. Belnap: All right, I withdraw that question.

Q. Have you changed your answers from those you gave me when I asked you about this certain river elevator and you told me you did not know?

Mr. Enoch: I object to that unless Mr. Belnap wants to know now whether or not he has the correct answer to the same question that he asked Mr. Rigg. That is too general and I object to asking Mr. Rigg that question.

Mr. Belnap: The difficulty is there, Mr. Examiner, counsel has been making a long statement to him and tried to get him to agree with something and sometimes he would hedge away from it and sometimes he would agree with it.

Exam. Taylor: Well, you had your opportunity to object to the leading questions.

Mr. Belnap: Yes, I had the opportunity.

Mr. Enoch: You had the same thing applied to you.

Mr. Belnap: I absolutely am not clear on the proposition of whether or not Mr. Rigg has stated whether or not the rail elevator man would be hurt or said something different. At one time he told me he didn't know where the hurt would be. Now, I don't know whether I am talking about

the same subject or not and I would like to have it from [fol. 527] the witness.

Mr. Enoch: I have no objection to your asking about that.

The Witness: You are not speaking as to the future now. You are speaking as to a rail elevator man doing business on grain today.

By Mr. Belnap:

Q. That is right. Is he hurt by the present adjustment?

A. I can't answer your question as to what extent he is hurt.

Q. Do you know whether he is hurt at all?

A. No, I don't know whether he is hurt at all.

Mr. Belnap: Thank you.

Mr. Enoch: Now, right in that connection may I ask this question——

Mr. Belnap: I object to any further questions on redirect going over the same ground and telling the witness these things over and over again.

Mr. Enoch: Now, Mr. Belnap, I hadn't intended to tell the witness anything and I will agree with you that if you find any question in that record where that appears that it may be stricken out and the answer, too. Now, I would like to ask Mr. Rigg just one question:

Q. What is this country elevator man doing with his elevator and what is he going to do with it if he acts as a commission man solely for the water elevator man?

A. He isn't going to use it.

Q. Do you think he is hurt?

[fol. 528] Mr. Belnap: I object to that. You can't lead your own witness.

Mr. Enoch: I withdraw it.

Exam. Taylor: The question is withdrawn.

Mr. Cole: That question that he asked is withdrawn?

Exam. Taylor: Yes.

Mr. Cole: But now, I really, for the purpose of making it clear to the Commission,—and, if you are satisfied, Mr. Examiner, I will sit down,—but I patiently tried to ask this witness something to get just a plain answer. Now, all I want is the actual fact, that is all I want, I don't know

what answer he is going to give but I would like to get the record clear on this point. He answered me two questions when I went into detail on my examination; I think Mr. Rigg will remember those questions. I asked him what was——

Exam. Taylor: Well, are you satisfied with his answers?

Mr. Cole: I am satisfied with the answers that he gave me, yes, sir.

Exam. Taylor: All right.

Mr. Cole: With the answers that he gave me but I cannot understand how he could answer those questions to me the way he did and answer Mr. Belnap the way he answered Mr. Belnap. I can't understand how he can again answer me the way ray he did and answer Mr. Belnap the way he did.

Mr. Belnap: Mr. Examiner, I think he ought to be permitted to explain his answer.

[fol. 529] The Witness: I will explain it to clear up the question.

Mr. Cole: May he?

Exam. Taylor: Yes. If there is any fog in the record let us get it out.

Mr. Cole: All right.

The Witness: As I understand it, Mr. Cole, when the rail elevator man at Seneca buys grain for the river elevator he is allowed two cents a bushel commission.

Mr. Belnap: Do you know that, Mr. Rigg?

The Witness: He is allowed two cents a bushel commission, as I understand it. Now, that is about all that he can make on grain which he buys from the farmer and handles through his elevator and ships to Chicago direct, two cents a bushel.

Exam. Taylor: Does that clear it up now, Mr. Cole?

Mr. Cole: I will take his answer. It is not clear to me, no, sir.

The Witness: What difference does it make? If it pays a man to make his two cents a bushel what difference does it make whether it goes through the rail elevator or the river elevator? Now, that is what my answer to Mr. Belnap is predicated on. I hope I have made it clear.

Mr. Belnap: That is all.

Mr. Cole: Thank you.

Mr. Day: In other words, Mr. Examiner, it would mean that this investment in the elevator and the elevator prop-
[fol. 530] erty and the elevator facilities is worthless.

Mr. Belnap: I object to that.

Exam. Taylor: Objection sustained.

The Witness: I made a statement as to the future—excuse me.

Mr. Day: Well, there is a conflict. His testimony certainly is not clear on that point, Mr. Examiner. The way it stands in the record now it doesn't mean a thing; that he has this tremendous investment in the elevator and the important apparatus and machinery that is necessary to have in an elevator. There are probably hundreds of thousands of dollars.

Exam. Taylor: It is perfectly clear to me.

Mr. Day: According to the witness' answer it doesn't mean anything. He can go out and do business in his hatband and make just as much money as he can with the elevator property. That certainly is not clear.

The Witness: Can I make another statement to clear it up?

Exam. Taylor: If you can clear it up.

The Witness: What I want to say to you is this: If you are speaking about the future, whenever the river elevator man gets ready to deal and the rail elevator man says, "I am not going to do business with you any more, I am going to do business with the farmers direct," then the river elevator man is washed up. Mr. Belnap was asking me about today and you are asking me about the future,
[fol. 531] that is the difference. As I understand you, Mr. Belnap, that is in the future.

Mr. Belnap: On a given set of circumstances which you don't know is going to happen.

The Witness: No, I don't know whether it is going to happen.

Mr. Macaulay: I have a question.

Q. Now, you state that the elevator man now gets a commission of two cents per bushel and he does not run the grain through his facilities. Did I understand you correctly?

A. That is my knowledge of it as far as I have been able to get it.

Q. Are you able to state how much more he would have to charge for himself if he handled it through his facilities?

A. No, sir.

Q. It would be more than two cents, would it not, in order to net him two cents?

A. I don't know.

Q. Well, it would be presumed that a handling charge would require some help and some electricity and——

Exam. Taylor: The witness answered he doesn't know, Mr. Macaulay.

Mr. Macaulay: All right.

Q. What facilities do you have at Morris, Illinois?

Exam. Taylor: In what way was this brought out on cross examination?

[fols. 532-536] Mr. Macaulay: He stated, Mr. Examiner, that the railroads had large investments at these various points and if the barge shipments continued these large investments will be wiped out and I am wondering what large investments they have in Morris, Illinois?

A. What we have?

Q. Yes.

A. We haven't got any investments in elevators at Morris, Illinois.

Q. Do you have a side track, several side tracks?

A. A side track, yes, but nothing in elevator facilities.

Mr. Macauley: That is all.

Exam. Taylor: Is that all from this witness? Witness is excused.

(Witness excused.)

Exam. Taylor: At this time we will adjourn until 9 o'clock tomorrow morning.

(Whereupon, at 5:10 o'clock p. m., the hearing was adjourned until 9:00 o'clock a. m., Wednesday, December 20, 1939.)

[fol. 537] Chicago, Illinois,
Wednesday, December 20, 1939.

Before R. G. Taylor, Examiner

Hearing Resumed at 9:00 o'clock A. M.

Appearances: As heretofore noted.

PROCEEDINGS

Exam. Taylor: Proceed.
Mr. Enoch: Mr. Behrle, please.

J. A. BEHRLE, was sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Give your name to the reporter, please.
A. J. A. Behrle.
Q. You are located in Chicago, Mr. Behrle?
A. Yes.
Q. With what carrier?
A. I am General Freight Agent of the Alton Railroad.
Q. In the traffic department, of course?
A. Yes.
Q. How long have you been in the traffic department?
A. 36 years.
Q. During that time have you had to do with rates and [fol. 538] traffic matters and particularly grain rates, grain traffic?
A. Yes, sir.
Q. Did you distribute an exhibit here yesterday?
A. I did.

Exam. Taylor: Off the record, identify these exhibits.

(Discussion outside the record.)

(Exhibits 15, 16 and 17, Witness Behrle, marked for identification.)

By Mr. Enoch:

Q. Mr. Behrle, were Exhibits 15, 16 and 17 which you have just identified prepared by you or under your direction?
A. They were.

Q. Are the facts purporting to be stated thereon correct?

A. To the best of my knowledge and belief.

Q. Will you proceed to explain Exhibit 15.

A. Exhibit 15 is a statement showing the corn production by counties for the years 1931 to 1938, inclusive, in bushels; the counties are Will, Grundy and Livingston, in Illinois. These figures are taken from the reports of the Department of Agriculture of the State of Illinois, who operate in conjunction with the Federal Department of Agriculture. The figures for the year 1939 by counties are of course not yet available. But the estimated corn production for 1939 indicated Illinois is 504,236,000 bushels, as contrasted with 464,923,000 bushels in 1938.

[fol. 539] In the next exhibit, numbered 16, we have shown the number of carloads of corn to Chicago via the Alton Railroad during the calendar years 1932 to 1938, inclusive, and the first eleven months of 1939. Included in this movement is some white corn which ultimately finds its way to cereal mills. White corn, as distinguished from yellow corn, comprises 10 or 15 per cent of all corn. Several tests that we have made of corn loadings on the Alton Railroad indicate that they will average 95,000 pounds.

Exhibit 17 is a statement showing the relationship of production and movement during the years 1933 to 1939, inclusive. I would like to explain that we have used as a basis, starting with 1931—'32, the average production by counties for the year 1931 and 1932. The succeeding years have been worked out on the same basis. That is, the figures shown for 1933 were computed on the average of 1932 and '33 and so on.

Now, as I previously related, we do not have the figures by counties for the year 1939. The 1939 figures were therefore computed on the relationship of the corn production in 1938 as related to 1939 for the entire State of Illinois. That is the only way in which we could arrive at the figure in order to complete the picture. The movement to Chicago during the years 1932 to 1939 was actual, except for the month of December, 1939, which has not as yet been completed. And for the December figures we took the [fol. 540] movement in November, which I think is fair and reasonable. If anything, the movement in December is lighter than in November, as a rule.

In connection with this exhibit, I direct particular attention to the showing from Gardner and Dwight, which indicates that while in the year 1932 we start off with 100 per cent, we terminate in 1939 with 19.6 per cent from Gardner and 29½ per cent from Dwight.

I wish to make this further statement. The Alton Railroad operates lines in both Illinois and Missouri. It is one of the major railroads in Illinois and serves the three largest cities, Chicago, Peoria and East St. Louis. It is the shortest route from Chicago to St. Louis. The line from Chicago to St. Louis is via Joilet, Bloomington, Springfield and Alton.

In Exhibit 16, the stations Elwood to Cayuga, are on the main line of the Alton Railroad between Chicago and St. Louis. Nevada, Blackstone and Smithdale are on the line running west from Dwight to Washington, which is a branch.

The Alton Railroad is the successor to the Chicago & Alton Railroad. The Chicago & Alton Railroad, although serving a splendid territory was in financial straits for years and went into receivership in 1922, where it remained until 1931, when the Alton Railroad took over the property. Although the Alton Railroad is well managed, it too has had great difficulty in enduring and has been compelled to forego payment of its bond interest on three occasions in the last year and a half. Neither the Alton Railroad or [fol. 541] its predecessor paid a stock dividend in over 30 years. Both have contributed handsomely to taxes in the State of Illinois. I make mention of this to indicate the necessity of most serious consideration of our revenue requirements.

The current system of through rail rates to the western termini, roughly the line from Buffalo to Pittsburgh and east, has been in effect for more than 30 years. Under this plan, so-called "specifics" were graded south from Chicago to central Illinois. This central Illinois group was of sizable proportion. These specifics were added to the reshipping rates from Chicago. The through rates thus arrived at were applied via Chicago and the interior markets. This adjustment was, in the main, highly satisfactory.

In 1910 the Illinois railroads proposed an increase of 1 cent in the specific proportions. After a hearing before

the late Commissioner Prouty, in the suspension proceeding which followed the filing of the increased rate tariffs, the increase was permitted. I refer to these situations as indicating that this is not a new situation with the Interstate Commerce Commission and that the subject has been discussed on several occasions at considerable length.

In another proceeding, the Peoria Board of Trade case in 1918, I believe, the Commission upheld the adjustment. A discordant note was struck in 1933 when barge competition [fol. 542] at Morris was threatened. Twenty miles south of Morris and connected by good roads are the stations of Gardner and Dwight on the Alton Railroad, which for years had enjoyed the same rail rates to Chicago and east as Morris. Almost immediately, we were besieged by the elevator operators for some measure of assistance to protect them against the invasion of their territory by the barge operators on the Illinois River. The contention was that the rate advantage to Chicago, at that time the rate of the Federal Barge was 4.8 cents to Chicago—the Federal Barge Lines also carried a 4 cent rate to St. Louis—grain would be attracted from the territory served by the elevators at Gardner and Dwight and the vicinity to Morris.

Now, as a result of the deliberations in the many conferences with these elevator people, we made a reduction in our rates effective June 10, 1933. I don't want to take up too much time, but I do want to give you these figures. I will call first the rate that was in effect on June 9th, and then the rate on June 10th:

Elwood, 9, 6½; Wilmington, 9, 7; Gardner, 9½, 7½; Dwight, 9½, 8; Odell, 10, 9; Cayuga, 10, 9½. From stations on the Dwight line, Nevada, 9½, 8; Blackstone, 9½, 8; Streator, 9½, 8.

Now, I will also give the present interstate rates and the rates which are published for application on state traffic with no transit at Chicago. The first will be the interstate [fol. 543] rate, the second the state rate: Elwood, 8½, 5½; Wilmington, 9½, 5½; Gardner, 10, 5½; Dwight, 10, 6; Odell, 10½, 7; Cayuga, 10½, 8; Nevada, 10, 8; Blackstone, 10, 6; and Streator 10, 7. The rates in the year 1933 were carried in Alton Tariff 1604-L, I. C. C. 30. The rates in 1939 are shown in Alton Tariff 1604-O, I. C. C. No. 208.

Now, incidentally, I mention that the readjustment which

has taken place on state traffic has resulted in a disruption of the differences as between shipping points; and that situation has caused both the elevator operators and the railroads considerable concern. It will be noted, for instance, that Gardner and Dwight both had a rate of 9½ cents on June 9, 1933; that the rate from Gardner is now 5½ and from Dwight 6 cents. Now, Odell had a rate of 10 cents. The spread between Dwight and Odell was ½ cent. Odell now has a rate of 7 cents; the spread is 1 cent. Odell and Cayuga both enjoyed the same rates. The rate from Odell is now 7 cents, the rate from Cayuga is 8 cents; there is a spread of 1 cent.

Now, since 1933, every elevator operator on the Alton Railroad from Joliet on the north to Chenoa on the south and from Nevada to Cazenovia on the Dwight line, has complained about the effect of the barge competition, and in some instances arrangements have been made by elevator operators with the barge line operators under which the former act as an agent; the purchase of grain for movement beyond Morris by barge. I mention Morris because [fol. 544] that has been the principal seat of our competition.

By Mr. Belnap:

Q. Just to make that clear, what is the relation of the parties in that transaction?

A. It is a relationship between the elevator man on the Alton Railroad and the elevator man on the river.

Q. And you said one was an agent of the other?

A. Yes.

Q. Which one is the agent?

A. The elevator man on the Alton Railroad. And all of these operators have complained of the serious inroads made on them by reason of the barge competition with which they had been confronted. Their complaint is that the spread as between the rail rate and the charges paid for barge movement is sufficient to enable the barge operator to invade their territory and to take from them the grain which formerly moved through their elevators via rail.

That completes my statement.

Exam. Taylor: Any questions? Questions by counsel? Any questions on the other side? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Mr. Behrle, does your line support the suspended schedules in the hope and the belief if they would become effective, it would reduce the tonnage of grain moving by barge on the Illinois waterways?

[fol. 545] A. We are hopeful that we may recover some of the traffic we have lost.

Q. Well, in using that phraseology do you mean that you hope that the movement of grain via barge would be reduced?

A. I think it will, and in that way it will benefit both the railroads and the rail operators.

Q. The railroads and who else?

A. And the rail elevator operators.

Q. In your view of it, is there something fundamentally wrong with transporting grain by water, so that it should be discouraged?

A. I think there is something fundamentally wrong with that whole picture.

Q. I didn't ask you about the whole picture; I just asked you about the transportation of grain by water. Is there something wrong, fundamentally, with that sort of transportation service and that it should be handicapped and discouraged?

A. I don't know that I get the point of your inquiry. If Mr. Belnap's inquiry is as to the point of whether or not I think the present system on the Illinois waterway is fair and reasonable, I will say no.

Q. Why?

A. Because we are in competition with an uncontrolled, unregulated industry that does not pay its way.

Q. What do you mean by "uncontrolled"?

[fol. 546] A. No regulation of it.

Q. "Uncontrolled" and "unregulated" you use in the same sense?

A. Yes.

Q. As I understand it, as to that matter you think because Congress has not as yet seen fit to regulate the port-to-port transportation of grain on these inland streams, that transportation by that means should be discriminated against, handicapped and disadvantaged?

Mr. Enoch: Just a moment, I would like to know if the port-to-port transportation is the only thing that is involved in this case?

Mr. Belnap: I don't know whether it is or not, but I want to ask that first, Mr. Examiner.

Mr. Enoch: Then I think you ought to make yourself clear on that.

Mr. Belnap: I tried to.

Mr. Enoch: You haven't to me, and you can by saying either yes or no.

Mr. Belnap: Yes.

Mr. Enoch: That there is only just port-to-port transportation in this case?

Mr. Belnap: I don't know whether there is just port-to-port transportation. I don't think that is in this case at all. It is rail transportation in this case.

Mr. Enoch: I think before you talk to the witness, you [fol. 547] should make yourself clear so that he will know what you are talking about.

Mr. Belnap: I think he does. If he doesn't, I will restate it.

By Exam. Taylor:

Q. Do you understand the question, Mr. Behrle?

The Witness: I will have the reporter read it.

Mr. Belnap: Perhaps I should restate it for Mr. Enoch's benefit.

Mr. Enoch: Perhaps you should answer that question for him. That would suit me better than anything else.

Exam. Taylor: Let the reporter read the question.

(Question read.)

Mr. Cole: May I enter an objection to that query, because there is included therein the thought that the water transportation is in some sense, from what Mr. Behrle says, discriminated against; and what is the other phrase there?

The Reporter: "Handicapped and disadvantaged."

Mr. Cole: Handicapped and disadvantaged. There hasn't been a single word in this case to the effect that water transportation has been handicapped, disadvantaged or discriminated against.

Mr. Belnap: Well, Mr. Examiner, I don't believe the witness needs help of counsel in asking the question. I was

asking him if it was his opinion that it should be, because [fol. 548] it is not regulated. That question is susceptible of an answer.

Mr. Enoch: I have an objection to that question and all questions of a similar nature and it is this: I think it ought to be the effort of all the parties of this case to try it before the Commission and not try to build up a record here, which is going to furnish somebody some opportunities to make a great deal of publicity out of this thing and develop an attack by the railroads here on this grain waterways system of the United States and all things of that kind. I think it ought to be tried on this record here the way most of the cases are tried before the Commission.

Mr. Belnap: I don't understand the legal basis of that objection, Mr. Examiner.

Mr. Cole: My objection?

Mr. Belnap: No, Mr. Enoch's. I don't understand it.

Mr. Cole: Pardon me, I have one objection that preceded Mr. Enoch's.

Mr. Belnap: I understand Mr. Cole's objection to the effect that I have asked a hypothetical question for which no foundation was laid.

Mr. Cole: Absolutely correct.

By Exam. Taylor:

Q. Do you understand the question, Mr. Behrle?

A. His question presupposes a lot of things.

Mr. Belnap: I don't presuppose anything. I asked a [fol. 549] question, if a certain thing is his position. If it isn't, he can say no.

Exam. Taylor: As he understands it, Mr. Belnap?

Mr. Bednap: I don't mean to——

Exam. Taylor: Can you reword it so as to avoid that? The witness so understood it.

By Mr. Belnap:

Q. Is it the position of your line, Mr. Behrle, that because those engaging in transportation on a port-to-port basis of grain on the Illinois waterways have not been subject to regulation by Congress, is that it then is in the public interest to provide a type of a rail adjustment which will handicap that transportation?

A. No, that is not our position at all.

Q. Do you think the matter of regulation or non-regulation of the water carriers has anything to do with it?

Mr. Enoch: I would like to know if Mr. Behrle's answer to that question, either yes or no, will have anything to do with the determination of this case.

Exam. Taylor: That will be a point for argument.

By Exam. Taylor:

Q. Have you got the question?

A. No, I haven't.

Exam. Taylor: Read the question, Miss Reporter.

(Question read.)

The Witness: I think it—what do you mean by that?

By Mr. Belnap:

Q. Whether you encourage or discourage transportation [fol. 550] on the streams.

A. No, I think that they should both be treated alike and fairly.

Q. Do you think that the water transportation, the traffic which is transported by water and those engaged in it are entitled to the same treatment, whether they are regulated or not regulated by the Interstate Commerce Commission?

Mr. Enoch: That question isn't just right, because if they are not regulated by the Interstate Commerce Commission, they are not treated alike.

Exam. Taylor: Well, that is argumentative, too. There might be another government body that would regulate one that would not regulate the other. If the witness knows, he can answer.

The Witness: I wouldn't know even how to approach an answer to that question.

By Mr. Belnap:

Q. But Mr. Behrle, you used the word "uncontrolled and unregulated" regarding this transportation of grain on the Illinois waterways as being an important factor which led you to a certain conclusion. Now, what has the matter of regulation or non-regulation got to do with it?

That is all I am trying to develop. You thought it was important; now why?

A. Because I think that regulation and proper consideration of the subject of water competition or water transportation would place it more in harmony with the rail transportation.

Q. Perhaps so.

[fol. 551] A. And in addition to that, I think that some steps ought to be taken whereby the users of water transportation would more nearly pay their share of the cost of such transportation.

Q. Perhaps that might be so, but does that have a bearing, in your judgment, on the propriety of the rates under suspension as to whether these inland stream carriers are regulated or not regulated?

A. In the meantime, we are faced with the proposition of keeping the railroads and the elevators in existence.

Q. Yes, but that isn't the question I just asked you, Mr. Behrle.

A. I thought that was the answer.

Mr. Belnap: Will you read the last question, please?

(Question read.)

The Witness: Yes, it does.

By Mr. Belnap:

Q. Well, what is the bearing? That is what I am trying to find out; why the Commission should go one way in respect to these rates, if the inbound carrier via barge to Chicago is regulated, and why it should perhaps reach a different conclusion if that carrier is not subject to regulation under the Act?

Mr. Cole: Mr. Examiner, I submit the witness has answered that twice, now, to the best of his ability.

Mr. Belnap: Maybe Mr. Cole can tell me, because I didn't understand it.

[fol. 552] Mr. Cole: What did you ask?

Mr. Belnap: I asked the one he has answered twice.

Mr. Cole: I mean me? What did you ask me?

Mr. Belnap: You can tell what his answer is.

Mr. Cole: He has answered that——

Mr. Belnap: What is it? I don't hear it.

Mr. Cole: Well, you don't hear me?

Mr. Belnap: No, I didn't hear any answer. You had heard it and I thought you would relay it.

Mr. Cole: He answered it twice on the record.

Mr. Belnap: What was it? What was the answer.

Mr. Cole: It was quite a long one the first time he gave the answer. You don't want me to repeat it from memory? It is in the record, the first answer he gave.

Mr. Belnap: I have a very simple point I want to develop. I am really not concerned with which way the witness answers, but I do want to have clearly the position of the carriers, and if counsel doesn't want to have it stated clearly on the record, counsel on their side, I do. I think it is important that the Commission be advised as to the underlying proposition here.

Mr. Cole: He is just pushing for a different answer, that is all. It has been answered twice. If we would permit it, I suspicion seriously that the questioning will be kept up until the answer is satisfactory to Mr. Belnap; not that there has been no answer, because there have been two an-
[fol. 553] swers to the same question.

Mr. Belnap: Mr. Cole can't summarize it for me, I bet you.

Mr. Cole: It is on the record, so why should I attempt to remember what is in the record? I can give you the answer he wants but it won't be the language that is in the record.

Exam. Taylor: Proceed, Mr. Belnap.

Mr. Belnap: Maybe I should address that question to counsel, Mr. Cole, if I may, Mr. Examiner.

Exam. Taylor: All right, if he wishes to answer it.

Mr. Belnap: As to whether or not the respondents in this proceeding rely on the fact that the inbound carriers via barge to Chicago are unregulated, in any part, in support of the change in the rate application which they now propose?

Mr. Cole: Not entirely so, Mr. Belnap.

Mr. Belnap: You rely on that in part?

Mr. Cole: Yes, that is a part of it, of course; like determining the level of a rate. There are numerous considerations, all of which dovetail into one another. In one instance, one consideration may have a primary effect upon the rate level; as you well know. In another instance, that same influence or factor may have no weight. We believe, like Mr. Behrle has patiently explained, that an important

consideration in connection with this feature—an important, now, please don't misconstrue that to state that that is the main consideration, because it isn't—but an important consideration here is the fact that there is a competitor [fol. 554] that we are trying to stay in business with and we are trying to stay in business against, and naturally, as in every competitive field that I have ever known, it is natural for those two competitors to try each one to seek and maintain its own place in that business picture. Does that answer you?

Mr. Belnap: That wasn't very responsive. The first part was, Mr. Examiner, he said it was important and he went on to make a statement about something else.

Mr. Cole: I had to explain because I didn't want you to misunderstand me or misconstrue me.

Mr. Enoch: I don't want the position of these interveners misunderstood. It is our position that whether or not these boat lines or boats or barges or whatever they are that are running up and down this river are regulated or not is a most important question for this Commission's consideration, in connection with its determination of whether or not it is lawful to apply on the outbound movement from Chicago a proportional rate when it comes in by such transportation media.

Mr. Belnap: Do you adopt that statement, Mr. Cole, on behalf of the respondents?

Mr. Cole: Yes, that is another feature of this case.

Mr. Belnap: In other words, respondents take the position that the lawfulness of applying an outbound proportional isdependent on whether or not the inbound carrier [fol. 555] is subject to regulation by the Commission. Do you say that on behalf of the eastern lines?

Mr. Cole: Is solely dependent on that?

Mr. Belnap: Is in any part dependent. The lawfulness of tariff application is all Mr. Enoch addressed himself to.

Mr. Cole: Mr. Belnap, you well know that there are several different kinds of rates out from that junction point you are talking about. Theoretically, we will always have a rate that is applicable from that junction point locally as a local rate. Certainly, anybody that brings stuff into that local point, to that junction point, may use that local rate outbound. It may be brought in by airplane, truck, water carriage or in your pocket. If the use is made of a proportional rate, however, with set rules attached to the

privilege of using that proportional rate, then it does become important to consider the method by which the goods are transported into that proportional rate point, when you come to consider the transportation and application of the tariff outbound, naturally.

Mr. Belnap: Well, to be clear on that, do the eastern lines for whom you speak take the position that it is illegal and unlawful to apply any proportional lower than the local to an outbound shipment if the inbound haul to the reshipping point was by a carrier not subject to interstate commerce regulation?

Mr. Cole: Oh, as an abstract proposition of law?

[fol. 556] Mr. Belnap: I understand that is Mr. Enoch's position.

Mr. Cole: No, he said that in this case. We are not bringing out here an abstract proposition of law. That is what your question would call for; just as an abstract proposition of law. Now, you know there is a big difference between the theories of abstract law and the practical application of it here. We have got a bunch of rules and regulations involved in this case. I don't think it is proper that we engage in a discussion of abstract legal principles.

Exam. Taylor: We will leave that for briefs.

Mr. Cole: Thank you, Mr. Examiner.

Mr. Belnap: We will do that, Mr. Examiner.

Exam. Taylor: I went along with you to get the statement of position.

Mr. Enoch: Would it be an imposition for just one further remark in this connection, inasmuch as we have been so frank with one another in stating position? Perhaps Mr. Belnap will say whether or not it is his position that it is proper and lawful to apply an outbound proportional from a point like Chicago, where the inbound movement is by a private carrier, truck, water, airplane or any other method of getting it into the proportional rate point.

Mr. Belnap: If Mr. Enoch will say what he means by "private carrier", I will answer. If he wants to accept——

Mr. Enoch: I will take your definition.

[fol. 557] Mr. Belnap: If he wants to say pertaining to this case, I will say this, I think it is perfectly lawful for the carriers to provide for tariff rules under which they will provide proportionals lower than the local on grain which arrives at Chicago by the barge lines which bring it

into Chicago, and via the lake lines which bring it into Chicago.

Mr. Enoch: I asked you by private carriers. I don't care by what means it comes in.

Mr. Belnap: I said by the barges that bring it into Chicago.

Mr. Enoch: I was asking you to tell me what your position was when it comes in by private carrier.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. So far as this matter of regulation, Mr. Behrle, I understand you to further take the position that if the water carrier performing the service into Chicago has on file with the Interstate Commerce Commission its rates, then it is perfectly proper for the eastern lines to apply the proportionals on that tonnage when it moves outbound?

By Mr. Enoch:

Q. Just a moment, did you say anything about that on your direct?

A. No.

Mr. Enoch: I object to it.

Exam. Taylor: Objection sustained.

By Mr. Belnap:

Q. You mentioned, Mr. Behrle, the fact that some ele-
[fol. 558] vator operator acted as an agent for some other operator. I appreciate that agency is a legal conclusion and I want to ascertain from you the facts as to that relation so that we can determine what the relation of the parties was.

A. I am not a lawyer and I didn't speak of that relationship from the standpoint of law. But I think I can explain to you from a practical standpoint what transpired; where the elevator operator on the Alton Railroad purchased grain for movement by truck to Morris. In other words, the operation was from the farm in the vicinity of Dwight to the elevator at Morris for movement by barge. The grain did not pass through the elevator at Dwight.

Q. But the Dwight elevator operator purchases this grain from the farmers?

A. Yes.

Q. And then he resells it to somebody for shipment up the river?

A. He purchases by arrangement with the elevator operator at Morris.

Q. He is given the power to go out, and in the case of the elevator at Morris, purchase the grain, is that the arrangement, or does the Dwight man purchase it in his own name?

A. I don't know just what the operation is there, but from a practical standpoint, the elevator man at Dwight makes the proposal to the farmer and arranges with the Morris elevator for the transfer of the grain from the farm to the [fol. 559] elevator at Morris, from which point it moves out by barge. That takes the grain entirely out of the elevator at Dwight or Gardner, or wherever it happens to be.

Q. Who buys the grain? You speak of somebody acting as agent. Who buys it?

A. I don't know in the final transaction whether the payment is made by the elevator at Morris or whether it is by the elevator at Dwight.

Q. Who buys it from the farmer?

A. I don't know, but through that operation, the movement through the elevator on the Alton Railroad is entirely circumvented, and the movement is direct from the farm to the elevator at the Illinois River.

Q. When you use the word "circumvented," you imply that you can't market grain in an orderly fashion and in the public interest unless it goes through an elevator in the vicinity of the farm?

A. If prior to the advent of the barge the grain business was handled in an orderly fashion, then the answer to your question is that that traffic has been disrupted.

Q. And you understand it is now disorderly because it doesn't go through an elevator in the immediate vicinity of the farm?

A. I think the condition is chaotic.

Q. Instead of disorderly?

A. Yes.

[fol. 560] Q. It is chaotic?

A. Yes.

Mr. Belnap: Thank you. That is all.

Exam. Taylor: Any further cross-examination?

Mr. Belnap: No, that is all I have.

By Mr. Macaulay:

Mr. Behrle, you stated that this reduced rate was put into effect in 1933?

A. Yes.

Q. Because of barge competition at Morris on grain going to Chicago?

A. Yes.

Q. Do you know of your own knowledge whether grain was shipped from Morris to Chicago by barge in 1933?

A. I didn't see any move at that time, Mr. Macaulay.

Q. Isn't it a fact, Mr. Behrle, that in 1933 and shortly prior thereto, great inroads had been made in the Alton and the Rock Island and a number of other railroads by the trucks that were trucking grain direct to Chicago?

A. No, not as far as the Alton is concerned.

Q. The only competition you had or anticipated was the competition from the barge line at that time?

A. Yes, sir.

Q. You stated, I believe, that you have been in traffic work for 36 years?

A. Yes.

[fol. 561] Q. Do you recall any shipments that were made from Morris at about the time you started in this business via the I & M Canal?

A. I do not.

Q. Did you ever hear of whether or not there were shipments of grain from Morris, Illinois, on the I & M Canal at or prior to the time that you started your experience?

A. I did not.

Q. When do your tariffs or when does your tariff expire or terminate that carries the intrastate rates?

A. June 30, 1940.

Q. When were those rates made effective, Mr. Behrle?

A. Which rates are you speaking of?

Q. The intrastate that expires June 30th? Do you know when those were made effective?

A. From what points?

Q. Any of the points; under the tariff that expires June 30, 1940.

A. Well, the dates varied as to the point of origin.

Q. Well, we will say at Gardner.

A. The rate from Gardner became effective April 21, 1939.

Q. And was there any other rate, intrastate rate prior to April 21, 1939, in the area defined in Exhibit 3, with which I presume you have been furnished a copy?

A. Your question is, was there a state rate from Gardner to Chicago in effect prior to the time that the 5½ cent rate [fol. 562] was published.

Q. No, prior to the present one, the one that expires June 30, 1939.

Exam. Taylor: 1940.

The Witness: That is the 5½ cent rate.

By Mr. Macaulay:

Q. Or 1940; pardon me.

A. Your question is whether or not there was a state rate from Gardner to Chicago prior — that time?

Q. Yes.

A. Yes, there was.

Q. And when was that rate made effective?

A. March 16th or March 28th, 1939.

Q. You stated that every elevator from Joliet to—I am not sure what the other point was—complained about the competition at Morris by the barge operators or barge grain buyers. When was it that you made your survey of these elevator operators?

A. We have been making surveys since the year 1933.

Q. Would you say that you have made a survey in the past year?

A. Yes.

Q. And did you say that during the past year, every elevator operator in that area on the Alton complained about the barge competition?

A. Yes.

Q. Now, you made mention of a point about uncontrolled, [fol. 563] unregulated traffic. Getting back to your——

Exam. Taylor: Are you going to go all through that again, Mr. Macaulay?

Mr. Macaulay: I want to make one statement.

Exam. Taylor: Make it brief, please.

By Mr. Macaulay:

Q. You are familiar with the tariffs that are being proposed?

A. Yes.

Q. In your opinion, is it any more fair to grant reshipping rates on unregulated lake carriers than to grant it on unregulated barge carriers in Chicago?

Mr. Enoch: I object to that. Suppose he answers it either one way or another, it isn't going to help the Commission to determine the issues in this case.

Exam. Taylor: Did you hear the objection?

Mr. Macaulay: I beg your pardon?

Exam. Taylor: Did you hear the objection?

Mr. Macaulay: I just heard a little of it.

Mr. Enoch: I said I object to Mr. Macaulay's question, because I don't believe that Mr. Behrle's answer to that question either way is going to be helpful to the Commission in determining the issue in this case.

Mr. Macaulay: Maybe it might be the basis of argument, as was said. He has made a statement of his opposition to uncontrolled, unregulated traffic, and as a position with [fol. 564] reference to barge traffic, I want to know whether or not he has the same position with reference to lake traffic. I think it is very pertinent to the issue in this case.

Mr. Enoch: I object to it, because if the Commission depends upon what a witness says about whether a thing is fair or not, it will all depend upon who can get the most witnesses. The Commission isn't going to base any decision on that.

Exam. Taylor: The witness may answer if he knows.

The Witness: He does not know.

Mr. Macaulay: I don't believe that is a responsive answer.

Exam. Taylor: He says he doesn't know; he can't answer your question.

Mr. Macaulay: All right, that is all.

Exam. Taylor: Any more?

Mr. Root: Yes.

By Mr. Root:

Q. Mr. Behrle, I understood you to say that the grain business along the Alton Railroad was in more or less of a chaotic condition and you at least implied that that was caused by the waterways, am I correct in that understanding?

A. Yes.

Q. As a matter of fact, Mr. Behrle, were all of the elevators along your line, particularly in the vicinity of Dwight, losing business to truckers who were trucking the grain direct from that community, probably from the farms to Chicago before the northern end of the Illinois waterway was complete and usable?

[fol. 565] A. We never experienced the effect of that competition and I do know that since this question arose in 1933, one trucker located in Dwight proposed to move an extensive volume of grain to Chicago by truck. I think he folded up in about one week. I do know there are some people in Dwight that do a little trucking to Chicago, but as related to the total weight, it is inconsequential.

Q. Did you ever have any complaints from elevator operators as to trucks hurting their business, at which time they requested you to give them more favorable rates so that they could compete with the trucks? I am speaking purely before the waterway was in use.

Mr. Enoch: Well, you mean from Dwight, for instance, to Chicago?

Mr. Root: That is right.

The Witness: I don't recall ever having any elevator in the vicinity of Dwight raise that point.

By Mr. Root:

Q. Did Mr. Robbins and Mr. McClellan ever call on you and tell you, back before the waterway, now, the trucks were cutting into their business and asked the Alton to give a reduced rate to protect their business?

A. Let's get straight on that point. What do you mean, about trucks?

Q. Here, I am talking about the time before the waterway——

A. Before the War?

[fol. 566] Exam. Taylor: A little louder, please.

By Mr. Root:

Q. I say I am talking about the time before the Illinois waterway was completed and usable for the shipment of grain by barge. Now, weren't there truck movements of grain from Dwight to Chicago before that time?

A. Not to amount to anything.

Q. Did you ever have complaints from these two elevator

men in Dwight whom I referred to, asking you to give a lower rate——

Exam. Taylor: What were the names of those two men? Can you read the question?

(Question read.)

By Mr. Root:

Q. So that they might compete with truck traffic which was hauling grain direct from farms in the vicinity of Dwight to Chicago?

A. By truck all the way?

Q. Yes, this is before the waterway was usable.

A. I recall no such conversation. I do distinctly recall the conversations that we have had since the year 1933 when both Mr. Robbins and Mr. McClellan protested vigorously against the losses of grain to the trucks and barge via Morris, and the waterway to Chicago.

Q. But they never complained about the trucking of grain direct from Dwight to Chicago?

A. It was mentioned incidentally in connection with this development which, as I have stated to you, was about of [fol. 567] one week's duration and collapsed and nothing further was heard from it. I do know that there are certain people in Dwight who engage in the trucking business who now and then do truck a load or so to Chicago, but it has never been a large factor; in fact, inconsequential, as far as we are concerned.

Q. If you didn't have the waterways, do you know if it would be an important factor? You say it is a small factor?

Exam. Taylor: Well, he has answered. That would be a mere guess. Anything further?

Mr. Root: That is all.

Exam. Taylor: Is there anything further from this witness?

Mr. Enoch: I offer in evidence, if your Honor please, Exhibits 15, 16 and 17, previously identified.

Exam. Taylor: They may be received.

(Exhibits 15, 16 and 17, Witness Behrle, received in evidence.)

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

HENRY CHRISTIANSON, was sworn and testified as follows:

Direct examination.

The Witness: My name is Henry Christianson. I am one of the assistant general freight agents of the Chicago, Burlington & Quincy Railroad, headquarters Chicago.
[fol. 568] Continuously, since 1925, my time has been devoted to preparing evidence for use in hearings before the Interstate and state commissions in litigation in which the CB&Q is concerned, appearing before examiners and state joint boards at hearings on applications of truckers for certificate or permits to operate in territory reached by the Burlington, and appearing before some of the state tax commissions in the territory in which the Burlington operates.

The CB&Q Railroad supports the tariff published by the respondents in this proceeding for the reason, the purpose of the tariff changes is, as we understand it, to correct a situation which has resulted inadvertently on the part of the respondents, I am satisfied, in a situation which unduly handicaps the lines west of Chicago in competing for business with operations on the Illinois River, for the reason that, as shown by exhibits introduced by Mr. Tannehill, under the arrangement as now published, grain moves from these river landings to points east of Chicago on rates lower than the local rates maintained by the eastern roads from Chicago to destination. In the case of the rail lines, charges are never assessed on less than the local rate applying from Chicago to the eastern destinations. In the case of the eastern half of Official territory, the spread between the local rate out of Chicago and the proportional rate out of Chicago is as much as 8½ cents. We don't know, [fol. 569] at any rate I don't know just what the charge assessed by the barge line into Chicago is or the charge made by the tugs which haul in barges. The indications are all, however, that the cost is or that the charge is less than 4½ cents a hundred pounds.

The effort of the respondents to place their dealings with the barge lines or with the operators on the Illinois River on a parity with the arrangements they have with the rail lines will remove this present unfair treatment of the western lines. As I say I don't believe that unfair treatment was deliberate. It is something which has simply crept

into the situation. The respondents are doing what they now can to correct it and I believe they should be permitted to correct the situation.

By Exam. Taylor:

Q. Is that all you have?
A. Yes, sir.

Exam. Taylor: Any questions by counsel? Any questions by counsel in favor of the proposed schedules? Cross examine. (No response.) Witness excused.
Mr. Macaulay: Just one question.
Exam. Taylor: Mr. Macaulay.

Cross-examination.

By Mr. Macaulay:

Q. You state that you don't know what the charge is by barge. Do you know what the charge is by lake to Chicago from a point such as Duluth?
A. No, I don't.

Mr. Macaulay: That is all.
[fol. 570] Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Mr. Enoch: Mr. Hegberg.

R. M. Hegberg, was sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Give your name to the reporter, please.
A. My name is R. M. Hegberg. I have been employed in the Santa Fe traffic department for more than 20 years. The address is 80 East Jackson Boulevard, Chicago.
Q. Did you distribute an exhibit here?
A. I distributed an exhibit, yes, sir.

By Exam. Taylor:

Q. Just one, or three?

A. Just one. I gave you three copies.

Mr. Enoch: I ask that it be marked Exhibit No. 18.

(Exhibit 18, Witness Hegberg, marked for identification.)

By Mr. Enoch:

Q. Was this Exhibit No. 18 prepared by you?
A. It was, yes, sir.

By Mr. Belnap:

Q. How do you spell your name, please?
A. H-e-g-b-e-r-g.

By Mr. Enoch:

Q. Proceed to explain this exhibit.

A. The line of the A. T. & S. F. Railway is the first railroad south of the Illinois River in the territory east of Ottawa. In this particular territory we have grain ele- [fol. 571] vators at every station Coal City and west. Barge competition on the Illinois River has taken almost all of the corn tonnage normally shipped from points on our line across country from Morris, to which river port the barges have attracted most of this business.

Exhibit No. 18 shows the corn shipments made from stations Lorenzo to Kinsman inclusive for the years 1927 to 1932, inclusive, with a six-year average. From these six shipping points we formerly received an average of 557 cars of corn annually prior to the beginning of barging on the Illinois Waterway in 1933. The rail business from long established elevators at these points has been diminishing until now there is practically nothing left as this exhibit shows current total corn movements by rail from these stations for 1938 to be 116 cars and for eleven months of 1939, 56 cars.

Efforts to hold this tonnage to rail shipment by rate reductions have not brought results. The barge-served elevators at Morris offer prices which attract this corn tonnage and the additional artificial stimulus given barge transportation by the preferential treatment accorded riverborne grain by eastern railroads in the application of their proportional or reshipping rates from Chicago has virtually eliminated rail transportation from this grain-producing area along our line and crippled the legitimate func-

tions of the rail-served grain elevators located at these stations Coal City to Kinsman, inclusive. We believe ex-river grain or the products thereof should not be moved [fol. 572] eastwardly by rail from Chicago upon proportional rates containing more favorable conditions than are applied on ex-rail Illinois grain.

By Exam. Taylor:

Q. Is that all?
A. That is all I have.

Exam. Taylor: Any questions by counsel? Any questions by counsel in favor of the proposed rates? (No response.) Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Does the Santa Fe Railroad own the elevators along this line?
A. Do they own them?
Q. Yes, sir.
A. No, sir.
Q. Do they operate them?
A. I don't know of any.
Q. Privately owned elevators?
A. I understand so, yes.
Q. It is the view of your line that if the eastern carriers are able to justify what is here proposed, that the result will be to eliminate the transportation of grain on the Ililnois waterways by barge and have it transported via the rail carriers?
A. No, we only hope to recapture the tonnage that we have lost, or some of it.
Q. Have you made any investigation how much you are [fol. 573] going to get back?
A. Well, with parity, we feel that we ought to get back somewhere near the average.
Q. That you handled prior to the time that there was any river transportation?
A. Well, I would say so.
Q. That is what you are shooting at, is it not?
A. Comparatively so, yes.
Q. What do you mean by "parity"?

A. Putting the barge transportation on a parity with rail transportation.

Q. That is what you said. What do you mean by putting it on a parity?

A. Well, eliminate the preferential rates or privileges it now has on this particular commodity.

Q. Would you be somewhat more specific and tell me what rates you are talking about; what you want to eliminate, without using the adjective. Just tell me about the rates. We will argue the case later.

A. I said that with parity of conditions, we believe we could recapture considerable of this grain.

Q. What do you mean by "parity"?

A. Well, equal rights for both rail and barge.

Q. You mean the rates from Morris and these other points to Chicago should be on a parity?

[fol. 574] Exam. Taylor: With what?

Mr. Belnap: I don't know. He says equal and parity. He has got to start with a peg point and relate something to something. I can't tell what he means.

Mr. Enoch: I think that the answer previous to this last answer was a very competent answer to that point.

Mr. Belnap: The one that had "preferential" in it?

Mr. Enoch: May we have that read for Mr. Belnap again?

Exam. Taylor: Read the question and answer.

(Record read.)

By Mr. Belnap:

Q. Equal where?

Mr. Enoch: Oh, I think this is going a little too far.

Mr. Belnap: Please, Mr. Examiner——

Mr. Enoch: He doesn't say where——

Exam. Taylor: No cross talk, now. We are just going to get one at a time. The reporter can't get both of you when you both talk at once.

Mr. Belnap: I am cross-examining.

Mr. Enoch: I am objecting to that kind of cross-examination.

Mr. Belnap: I will abide by the Examiner's ruling, but I don't thing it is fair for eminent counsel for the rail lines to continually interrupt me.

Exam. Taylor: You put your question and if anyone desire- to object, object and I will make my ruling.

[fol. 575] Mr. Belnap: I want to know what the witness means by the word "parity." He says "equal."

The Witness: Equality.

Mr. Belnap: Is he talking about rates to Chicago or is he talking about——

The Witness: Talking about the entire situation.

By Mr. Belnap:

Q. From origin to destination?

A. Yes, sir.

Q. And you state the rate via the river, the proportion up to Chicago, the rate should be the same on the barge as via the rails?

A. I didn't say that, but today you have——

Mr. Cole: Mr. Examiner, I think if you will permit me, we can have this cleared up if we go back and examine this witness' statement on direct, and I feel sure that Mr. Belnap evidently has misunderstood the witness' statement on direct. The witness did make clear what he there referred to as his hopes of having the ex-barge grain and the ex-rail grain treated on a parity.

Mr. Belnap: I do not understand the proposal is to treat ex-rail and ex-barge on a parity.

Mr. Cole: This witness asked that on his direct examination.

Mr. Belnap: That, Mr. Examiner, is not the proposal of the eastern lines. The eastern lines proposed to have a wide-open application of their proportional in so far as [fol. 576] they control it to ex-rail grain and to exclude from that application ex-barge rates. That is the proposal of the respondents. There is no limitation in their rule as to an application of the proposal. My question is what the man means by the word "parity."

By Exam. Taylor:

Q. Can you explain any more definitely than you have already explained?

A. Well, in my testimony I stated that there is preferential treatment now being accorded barge transportation.

Q. In what way?

A. They are permitted to apply the reshipping rates from Chicago; whereas all-rail, we are subject to the local rate from Chicago.

By Mr. Belnap:

Q. I am asking you about what the eastern lines and their rules—you are familiar with their rules?

A. I am familiar with the rules, yes.

Q. In so far as the rules which govern the application of the proportionals published by the eastern lines are concerned. Presently, they provide for applying proportional rates on either ex-barge or ex-rail or ex-lake grain, do they not?

Mr. Enoch: Those rules are in evidence.

Mr. Belnap: Pardon me, sir. I have got a question that is unanswered.

Exam. Taylor: He wants to know from this witness if he knows that.

By Exam. Taylor:

Q. Do you know that, Mr. Witness?

A. The question was whether or not the reshipping rates [fol. 577] apply to ex-lake, ex-barge and——

By Mr. Belnap:

Q. Ex-rail grain.

A. They do, yes.

Q. Under the same circumstances and conditions, as far as rules are concerned. Today, they are treated equally, are they not, the three, ex-barge, ex-rail and ex-lake grain in so far as the rate application of the eastern lines is concerned?

A. With the proviso that you would have to on ex-rail transportation protect the local Chicago to destination rate.

Q. As far as the combination of the rail through charges is concerned?

A. Yes, sir.

Q. The proposal is not like that in so far as that of the ex-barge grain is concerned, is it?

A. No, it isn't.

Q. It is to exclude entirely the ex-barge grain from the application of the proportional?

A. That is right.

Q. So the proposal of the carriers is to treat ex-barge grain differently than they treat ex-rail grain, isn't that true?

A. It would be, yes.

Q. So there would be no parity as far as rate application east of Chicago under the respondent's proposal. You appreciate that, don't you?

A. It wouldn't be exactly the word "parity."

[fol. 578] Q. There would be no parity?

A. No.

Q. Does your railroad participate in the routes via which the proposed rates east of Chicago apply?

A. I don't think I understand the question. Will you repeat it?

Exam. Taylor: Read the question.

(Question read.)

Mr. Enoch: I would like to know if the intention is to inquire whether the Santa Fe is a party to those rates east of Chicago.

Mr. Belnap: The purpose of the present question is whether he participates in the route by which the proposed rates east of Chicago apply.

Mr. Enoch: I object, if that is what you are trying to do, until you tell this witness what you mean by "route."

Mr. Belnap: The routes publishing the tariff by which the rates apply.

Mr. Enoch: What rates?

Mr. Belnap: The rates which are in effect and under suspension east of Chicago.

Mr. Enoch: Chicago to New York, for instance.

Mr. Belnap: I won't restrict myself to one destination. Wherever the rates under suspension would apply.

Exam. Taylor: You mean the proportional rate east of Chicago?

[fol. 579] Mr. Belnap: Exactly, sir, and reshipping.

Exam. Taylor: You don't mean the through rate from the origin through the transit point or Chicago to destination?

Mr. Belnap: I don't understand any such rates are involved in this case, Mr. Examiner.

Exam. Taylor: Does the witness understand the question?

The Witness: Well, of course we don't participate in the proportional rates east of Chicago.

Exam. Taylor: That answers the question.

By Mr. Belnap:

Q. Your exhibit shows the shipments, your Exhibit 18. It doesn't show the destination.

A. That is right.

Q. Where is the destination?

A. Well, it is hard to say. It all came into Chicago, or practically—yes, it all came into Chicago. Some went east and some stayed here.

Q. The initial haul, however, was to Chicago?

A. That is right.

Q. Under the separately published rate of the Santa Fe Railroad applying to Chicago as the destination?

A. That is right.

Q. You said that your line is the nearest railroad to the south bank of the Illinois River?

A. That is right.

Q. For instance, Streator. How far is it cross country [fol. 580] from your station to the Illinois River?

A. From Streator?

Q. Yes, approximately.

A. I don't know.

Q. How close are you to the Illinois River in the territory which you covered by your testimony?

A. Between 10 and 15 miles.

Q. And then the next railroad to the east or south of you running into Chicago is the Alton?

A. That is right.

Q. And how far across country is it from your line to that of the Alton, cross country in that territory?

A. A very short distance; probably five or ten miles.

Mr. Belnap: Go ahead.

Exam. Taylor: Any questions, Mr. Macaulay?

By Mr. Macaulay:

Q. Referring to Exhibit 4, which sets forth your intrastate rates, can you state when those rates were made effective?

Mr. Enoch: This witness is not familiar with that exhibit.

Mr. Macaulay: I am referring to tariff 7124-I, ICC No. 13039.

The Witness: When that first became effective, is that the question?

By Mr. Macaulay:

Q. When was that particular tariff made effective?

[fol. 581] A. I don't know. I would say shortly after the time that the rates from Morris were published by the Rock Island.

Q. Around in April, then, of this year, would you say?

A. Oh, yes. The rates in effect today were effective on April 19, 1939, I believe.

Q. But your rates were made effective approximately the same date that the Rock Island intrastate rates were made effective?

A. That is right.

Q. All right. In the event that reshipping rates were denied barge traffic, do you know whether or not your railroad has formed a policy as to whether the intrastate rates will be eliminated after their termination date, June 30, 1940?

A. That all depends upon developments. We don't know what the situation will be until that time arrives.

Q. About when was the Santa Fe put through that territory around Morris?

Exam. Taylor: What do you mean?

By Mr. Macaulay:

Q. When was the line established?

Exam. Taylor: What do you mean, built in there?

Mr. Macaulay: Yes.

Mr. Enoch: B. C. or A. D.?

The Witness: I don't know; I think it was B. C.

Mr. Macaulay: That is all.

Exam. Taylor: Any further questions of this witness? (No response.) Witness excused and we will take a recess.

Mr. Schier: I would like to ask a question if I may, [fol. 582] Mr. Examiner.

Exam. Taylor: Mr. Schier.

By Mr. Schier:

Q. Mr. Hegberg, geographically does your railroad compete with the Illinois River? That is compete with the barge traffic on the River?

A. Yes.

Q. Barge operators provide competition for you, don't they?

A. They do.

Q. Are your present grain rates authorized by the Illinois State Commission or the Interstate Commission as the case may be?

A. Yes, sir.

Q. When the Illinois Commission authorized them, were they found to be compensatory?

A. Yes, sir.

Q. Do you know if any regulatory body has ever found the barge rates on the Illinois River to be compensatory?

A. No, sir.

Mr. Oliphant: Mr. Examiner, might we have a differentiation between barge lines to which Mr. Schier refers?

Mr. Schier: I will exclude the Federal Barge Lines, Mr. Oliphant.

By Mr. Schier:

Q. Do you know approximately how many members of the Chicago Board of Trade are using this Illinois River northbound to Chicago?

[fol. 583] A. No, sir, I do not.

Q. Would you say it was three? Would you say it was thirty? Would you say it was five? Have you any idea?

A. No, I have no idea.

Q. Would you say it was more or less restricted to the Norris Grain Company, the Continental Grain Company, probably Rosenbaum Grain and maybe one other?

Mr. Belnap: Mr. Examiner, I submit that the witness three times said he doesn't know.

Mr. Schier: I think his memory will be refreshed, Mr. Belnap, by coaching along a little bit.

The Witness: I don't know.

By Mr. Schier:

Q. Would you have any idea of how many members of the Chicago Board of Trade do not use it?

A. No, sir.

Q. Do you have any idea how many members there are of the Chicago Board of Trade?

A. I have not.

Mr. Schier: Mr. Brown, have you any idea?

Exam. Taylor: Well, Mr. Brown isn't on the stand, Mr. Schier.

By Mr. Schier:

Q. Well, would you believe that it is approximately a thousand?

A. I would, yes.

Q. Do you think I would be close enough to that?

[fol. 584] A. Yes.

Mr. Schier: There seems to be 1,604, for the record.

Mr. Macaulay: I object to counsel putting in statements to the number when the witness is unable to make the statement. If he wants to appear as a witness, he may do so.

Exam. Taylor: I sustain the objection.

By Mr. Schier:

Q. Have you any idea, Mr. Hegberg, why the rest of these members don't use it? In other words, is there adequate space available for all to use it, or is this something that is just provided for the use and perhaps demoralizing the normal method of grain trading in this state?

Mr. Macaulay: I object to that. He hasn't qualified as a witness who has knowledge of those facts. He says he is in the traffic department of the Santa Fe.

Mr. Schier: I am simply asking his opinion. He may know.

Exam. Taylor: Objection sustained.

By Mr. Schier:

Q. Do you know, Mr. Hegberg, if the operators on the Illinois River pay any toll for the use of that waterway?

Mr. Belnap: I object, as going beyond the bounds of his direct, Mr. Examiner.

Exam. Taylor: Objection sustained.

By Mr. Schier:

Q. Do you know if your railroad, Mr. Hegberg, pays any taxes to the state, right of way?

A. Yes, it surely does.

Q. And that factor, of course, is figured in the construc-
[fol. 585] tion of your rates?

A. That is right.

Mr. Schier: That is all I want.

Exam. Taylor: Anything further from this witness?

Mr. Belnap: If he is qualified to give construction of rates and various costs that go into them, I would like to pursue that inquiry.

Exam. Taylor: We overruled those objections, Mr. Belnap.

Mr. Belnap: I will pass him.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Mr. Brown: Mr. Culbertson, please.

W. E. Culbertson, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name and address?

A. W. E. Culbertson, Delavan, Illinois.

Q. What is your business or occupation?

A. I am the secretary of the Illinois Grain Dealers Organization.

Mr. Belnap: Louder, please.

The Witness: Secretary of the Illinois Grain Dealers Organization.

By Mr. Brown:

Q. About how many members are there of your organiza-
[fol. 586] tion?

A. We have an organization of approximately—we have about 300 members, operating about 40 per cent of the 1,700 grain elevators in the State of Illinois.

Q. And each one of your members operates a grain elevator in the country somewhere in Illinois?

A. Not all of them. We have some receivers and some broker members.

Q. I see. Have you a statement to make?

A. Yes. Our interest in these reshipping rates from Chicago on ex-river grain is that if they are to continue to apply to barge grain, it means that a large percentage of members in the Chicago area must cease their operations in the country grain-buying business. We have some relief by asking the carriers for reduced rates and have been given what we hoped would be competitive rates on corn; but these rates were non-transit, and with transit allowed on barge grain, this relief was not adequate. At the present time, the country elevator in the Chicago area is doing business at a loss in order to hold their customers and to ship by rail.

What we can't understand is why grain arriving in Chicago with no previous rail haul is entitled to transit, while that arriving by truck is not. We feel that we are entitled to relief and respectfully ask the Commission that the rates from Chicago to eastern points on ex-river grain be cancelled.

[fol. 587] I think that is about all the statement that——

Mr. Brown: Take the witness.

Exam. Taylor: Any questions by counsel for respondents? Any questions on this side? (No response.) Cross examine.

Cross examination.

By Mr. Belnap:

Q. From the standpoint of your members, what has been the effect of the requirement contained in the tariffs of the initial lines that transit will not be permitted under the intrastate rates which they publish?

A. Well, the rate that we have obtained hasn't been of adequate relief without transit.

Q. What has been the effect on the movement of that requirement in the tariff? You are familiar with it, are you not?

A. I am familiar with—I don't know if I understand just what you are asking me.

Q. You understand that from a certain territory some of the Illinois lines publish intrastate rates lower than their interstate rates and by their own tariffs provide that such rates may not be used if transit is claimed on the grain?

A. Yes.

Q. Now, what has been the effect of that?

A. Well, it has recaptured some of the grain.

Q. Recaptured it from what?

A. From the truck and barge.

Q. And you say it is not a satisfactory adjustment?

[fol. 588] A. It isn't adequate. It doesn't go far enough.

Q. Why?

A. Because of the fact that the barge and truck are still able to take the grain from certain territories.

Q. And it is your impression that if what the eastern carriers propose becomes effective, that the movement by the barge lines will cease?

A. No, sir.

Q. What do you think the effect will be?

A. I think it will lessen the grain moving from territory further from the river.

Q. From certain territory it will stop the movement?

A. That is right.

Q. Can you say what that territory is?

A. That territory that is farther removed from the waterway.

Q. Farther than what?

A. Probably 15, 20 miles.

Q. For the territory that is 15, 20 miles further than what?

A. From the river.

Q. In using that distance, are you going to take and say that for 10 or 15 miles from the river, there will be no movement to the river by truck and thence moved by barge?

A. No, sir.

Q. I don't understand your answer.

A. I couldn't answer you any more clearly.

[fol. 589] Q. Where is the territory that it is going to stop the movement?

A. I don't say it will stop it. I say it will be less.

Q. From what territory?

A. I just told you from 15 to 20 miles from the river.

Q. Well, more distant than that from the river, is that the territory you are talking about?

A. Yes, sir.

Q. Is it anyhandicap on the grain which moved to Chicago on these so-called non-transit rates that transit is not permitted?

A. Why, certainly.

Q. What is the nature of that handicap?

A. I am not a traffic man and I am just from the country and I don't pretend to get into all the details of the grain handling business other than from the country elevator point.

Q. I appreciate that. I am not going to ask you any technical questions about rates or application of rates or tariff provisions. I am interested in the effect of a rate of a different character, with which you are familiar, on the movement, and that is why I ask you additional questions.

A. Our grain in the country, grain-buying business naturally depends upon transportation that they have to get to a terminal market. You appreciate that. The cost. And if our grain that we ship in by rail is penalized by not having transit and that that is brought in by waterway is given an advantage over that by rail, why naturally our [fol. 590] members are at a handicap.

Q. You consider the restriction which the originating lines have placed on the use of those interstate rates so that they will not permit transit thereunder to be a penalty?

A. If they allow transit on water grain; on river grain.

Q. It is a penalty only in that event? Otherwise, it is no penalty?

A. No, because they have through rates.

Q. Who has through rates?

A. All the rails.

Q. By the use of the interstate factor to Chicago and the proportionals beyond?

A. That is right.

Q. Now, isn't your grain which moves on the intrastate

rates still penalized as compared with the grain which pays the interstate factor to Chicago?

A. I wouldn't really know. I am not far enough advanced in traffic matters to really make a statement.

Q. Do you know what the difference between these intrastate rates which carry no transit and the interstate rate which carries transit is?

A. Not exactly from a rate standpoint, but I do know that the grain won't sell for as much when it gets into Chicago, sir.

Q. How much is the difference?

A. It is just enough to make the grain business unprofit-[fol. 591] able out in the country.

Q. Do you understand it is about the difference—the difference is about that involved in the rates themselves?

A. I wouldn't know.

Q. Well, what is it in money?

A. I wouldn't know.

Q. Do you operate an elevator?

A. Yes, sir.

Q. Where?

A. At Steward, Illinois.

Q. Where is Steward?

A. In Lee County.

By Mr. Root:

Q. Dixon is the county seat of Lee, isn't it?

A. That is right. We are on the CB&Q.

By Mr. Belnap:

Q. How far are you from the Illinois River?

A. Well, I would say about 50 miles.

Q. Is there any grain moving from your territory to the River for movement by barge into Chicago?

A. Not much.

Q. Is there any?

A. I wouldn't know.

Q. You know of none, in other words?

A. Well, I have heard of some, but I don't know that it did, see.

Q. You have said that grain which moves on the non-[fol. 592] transit intrastate rates sells for less in Chicago. Do you ship that grain yourself? Are you the shipper?

A. I own the elevator.

Q. Are you the shipper of the grain?

A. Yes, sir; the elevator is.

Q. The elevator company?

A. Yes.

Q. Is the shipper of the grain?

A. Yes.

Q. Do you elect whether to ship on the intrastate or the interstate rate to Chicago?

A. Yes.

Q. And what is the difference from your station?

A. Well, we have a 10½ cent interstate rate and I think it is 9½, 9 or 9½, I wouldn't be very positive, but it is some little reduction.

Q. And do you elect to ship on the lower rate?

A. It just depends on the—it may be shipped on the intrastate or interstate rate according to—in that territory, we send it to Chicago, generally, and it is sold on the market, to the best advantage.

Q. When do you elect upon which rate to ship?

A. Whichever we can get the best price for.

Q. That is, you get one price on one basis and one price on the other, is that right?

[fol. 593] A. Sometimes, yes, sir.

Q. And if the difference in prices is not as much as the difference in rates, you will ship on the lower rates?

A. We depend on our commission merchant in Chicago or in the market to look after our interest when we send him the grain, and we take his judgment.

Q. That is the way it works out, isn't it?

A. I expect it is, yes, sir.

Q. Then if the difference in prices is greater than that difference in rates, then you will ship on the higher rate?

A. That is right.

By Mr. Root:

Q. Will you state how many, approximately, the members of your association you believe have been injured by the practice of shipping grain over the Illinois waterway, under existing tariffs?

A. Well, there is quite a large percentage of them. I wouldn't know just exactly because I haven't contacted each and every individual.

Q. Can you state specifically one elevator that has been injured?

A. Yes, I know that there are a number of elevators.

Q. State one, specifically.

A. For example, my own town. I live at Delavan.

Q. Has that elevator been injured?

A. Yes.

Q. Will you just tell us how that has been injured?

[fol. 594] A. Because of the fact that they just simply have lost a good proportion of their grain-buying business. The buying has been cut down. In the country elevator, the country grain business is probably done on a smaller margin of profit, that is, a buying margin, and you don't have to take my word for it. The Federal Trade Commission has found that the grain handling industry has been handled on a very small per cent of a volume and a turnover of the business, and it depends upon the volume of grain that they would have to handle. If you are buying grain on a cent and a half or two cents a bushel and you have a 300,000 volume and that is cut to 200,000, why, naturally you are hurt.

Q. What is the name of this elevator down there that has been hurt? Let's find out.

A. It is a farmer's elevator down there.

Q. Delavan, Illinois?

A. That is right.

Q. Now, you state specifically that it has lost business?

A. That is right.

Q. To whom has it lost the business?

A. It has lost it to the waterway.

Q. Who bought the grain——

A. I couldn't tell you, sir, because the fact is, I did own one of the elevators that that elevator operates, operated it myself for more than 30 years, sold it to them, and I know [fol. 595] that they do not do the business. I also am a farmer. And I know that my neighbors haul grain to the waterway.

Q. Why do they haul it to the waterway?

A. Because of the fact that the waterways subsidize the truckers.

Q. I asked you why?

Mr. Enoch: I think the witness should be permitted to finish his answer. You asked for it.

The Witness: The elevator grain buyers at the river

points encourage the truckers to go out and buy the grain—and they don't need much encouragement. They want the haul, anything to make a few dimes for themselves, and naturally they chisel in on the business of that territory.

By Mr. Root:

Q. How far is that elevator from the Illinois River?

A. It is 20 miles, sir.

Q. Has that elevator ever attempted to avail itself of the facilities of river transportation?

A. I couldn't tell you; I don't own it today. You asked me if they were hurt and I tell you they are, because of the fact I used to handle more business in competition with them than they handle now, and have it all.

Q. Does that elevator still ship grain it buys over the rail?

A. Some of it, and they haul some of it, transport it to the water.

Q. Do you mean that particular elevator?

[fol. 596] A. Yes.

Q. Why does it haul it to the water?

A. You will have to ask the management.

Q. In other words, you don't know much about that business that you say has been hurt?

A. I do know it isn't handling in the same manner, and I know he tells me he is hurt; that he doesn't do so well.

Q. Is that man here?

A. I just want to say this, if these elevators are not hurt, they are putting up an awful howl.

Q. We want to get down to where they are hurt.

A. There will be plenty of operators or——

Q. Isn't it a fact that you don't know yourself just how or why they are hurt, isn't that true?

A. I tried to tell you that the elevator depends upon the volume of its business. Not a one of your clients could stay in business there if their volume was cut down as the country elevators out from the river are cut down.

Q. That is true, but you——

A. That is just why they are hurt.

Q. But you don't say how this particular elevator was hurt.

A. I just stated to you that the elevator at Delavan had been hurt by its volume being decreased.

Q. But you don't know the reason for the reduction?
A. Yes.

[fol. 597] Mr. Day: I submit the witness has answered the question three or four times.
Exam. Taylor: I think he has answered the question.

By Mr. Root:

Q. You don't know whether that elevator man is attempting to ship his grain by water, to handle it that way to obtain the benefit of cheaper water transportation?
A. Well, I just stated to you that he is sending some of it to the river.
Q. Does he elevate that grain in his own house first and then haul it from there to the river?
A. I think he does. Some of it, and some of it he hauls direct from the farm to the river.

Exam. Taylor: Is that all, Mr. Root.
Mr. Root: That is all.
Mr. Baxter: I have one question.

By Mr. Baxter:

Q. Mr. Culbertson, if this proportional rate is cancelled, will you get any more money for your grain at Steward?
A. I don't think that we would, no.
Q. In other words, it wouldn't hurt you one way or another at Steward as to your prices that you get on your grain?
A. That we get for the grain at Steward? No, it wouldn't.

Mr. Baxter: That is all.
Mr. Childe: I have a question, please.
Exam. Taylor: Yes, sir.

[fol. 598] By Mr. Childe:

Q. I don't understand why it is that the elevators you represent are losing this business. Why can't they retain their business under present conditions?
A. Well, I would say that the reason they can't is because the rails have given, by the transit on the waterway, an advantage to water shippers that they are not entitled to over rail shipments.

Q. How does that affect the business of your elevators? Why can't you compete? Is it because that you can't name as high a price as your competitor, is that your difficulty?

A. The grain business has always been bought on what a person can give for it, and of course the country grain dealer will naturally pay everything that he can pay in order to hold that business.

Q. Well, will you explain that a little further, please. How do you get this business from the farmer? Do you quote him a certain—bid him a certain price?

A. The farmer comes in and asks me what I will pay for his corn, what it is worth, and I will tell him.

Q. And you tell him where, at his farm or the elevator?

A. At the elevator. Some of them go to the farm and get it. Some elevators make a practice of trucking it in. That is included, the hauling charge from the farm to the elevator in the bid they give the farmers. Others do not, see.

Q. Do you base your price arrangement at F. O. B. the [fol. 599] farm or F. O. B. the elevator?

A. Both ways.

Q. How do you base your price? What fixes the price that you bid?

A. On the best market that we have for the grain.

Q. And do you take into consideration the freight rate from your shipping point?

A. Why, certainly.

Q. To market?

A. Certainly. The transportation charges, yes, sir.

Q. And by the "market," am I to understand it is the Chicago market that fixes the price?

A. Well, sometimes there are outside markets, now and then.

Q. Generally it is Chicago?

A. That is true in the Chicago area.

Q. Now then, you say that you are losing this business to the operator that ships by river?

A. You are now speaking to my station at Steward, aren't you?

Q. Whoever you are speaking for in this case; just as an example.

A. Some of them are, yes, sir. I personally am not, because—I mean just simply my own elevator—we are

just passing the profit that we might have along in order to hold the business, because when business once is lost from an elevator, a customer starts going some place else, it is hard to regain that business.

[fol. 600] Q. Am I to understand from that that you have to meet the competition right in your town of the man that ships by river?

A. Yes, sir.

Q. And you are holding that now by operating at a small margin of profit?

A. I said in many instances at no profit at all.

Q. Now, take the man whom you say is hurt by this thing. For instance, the man at Delavan. You mentioned Delavan, didn't you?

A. That is right.

Q. Is he hurt because he can't bid as high a price as his competitor that ships by river, is that your point?

A. And have an adequate profit.

Q. Couldn't he bid that high a price if he himself used the river for shipping?

A. He does go to the river some.

Q. Why can't he bid as high a price as the other men that ship by river?

A. In a lot of instances, because of the fact that truckers will haul—there is no regulation, there is no knowing what it will cost in a matter of the charge that will be made by a trucker to transport grain or any other products. It is the same thing as the barge. You don't know what those rates are.

Q. Well, you all use the truckers to get the grain to the river or the elevator?

[fol. 601] Mr. Brown: No, he didn't say "you all use."

Mr. Childe: I mean all your elevators.

Mr. Brown: He didn't say that, even.

By Mr. Childe:

Q. Don't you use trucks to get the grain from the farm?

A. Sometimes the farmer—I said that sometimes, that the elevator will buy the grain at the farm; sometimes at the elevator. If it is at the elevator, the farmer gets his own trucks. He may hire his own trucks.

Q. Well, your elevators, the elevators you speak for are in no different position as far as the trucker is concerned than your competitor who uses the river, isn't that true?

A. That is true.

Q. The only difference, as I understand you, is that the man who ships by river gets a lower rate into the Chicago market?

A. That is right.

Q. And because he gets that lower rate, does he bid a higher price for the grain and thereby take it away from the elevators you represent?

A. That is right.

Q. Now then, my question I tried to ask a while ago was this: Why is it that the elevator operators you represent can't use the river and get the benefit of that low river rate and thereby compete successfully with the elevator operators who do use the river?

[fol. 602] A. Why, they are not located upon the river.

Q. Well, can't they truck the grain to the river elevator?

A. They don't need an elevator.

Q. Beg your pardon?

A. They wouldn't need an elevator to go into the kind of grain business now you are advocating, because of the simple fact that I might just locate down here in the country and start soliciting farmers to haul it to some elevator. If I have ten or fifteen, twenty thousand dollars invested in grain-handling facilities at a station, it is certainly a loss to me if I have to just eliminate that elevator and cease using it, and get me a trucker or two or three truckers and start soliciting grain out on the farm to go over to the river on a brokerage basis. Now, that is what is happening, and that is just exactly what is being advocated by these river operators. They want to eliminate——

Q. The question I had in mind was this: There is nothing to prevent the elevator men you represent from using the river, by trucking grain from the farm to the river bank and thence shipping it by river?

A. No, not if you want—there is nothing to prevent you, or me, or anybody from engaging in the grain business. It is not a monopoly or restricted to any particular class of

people. Anybody can get in it. It is rather a highly competitive business; always has been.

Q. Is it a fair statement, then, of your position, that the [fol. 603] people you represent prefer to ship by rail——

A. Absolutely.

Q. And they can't do it successfully now because the rail rates are high?

A. Well, the rail rates are too high compared with the river rate, that is right.

Mr. Childe: Thank you.

By Mr. Macaulay:

Q. Mr. Culbertson, I reviewed your petition that was filed in Washington, and in that I have a note that you stated that the retention of the reshipping rates on grain barge grain would spell ruin to 90 per cent of the country elevators of Illinois. Do I understand that that is your present position?

A. Ultimately, it would be.

Q. Ultimately, and when you say "ultimate," what do you mean?

A. I mean in the future. If this matter is not stopped, it just spreads like wildfire.

Q. Would you say that it is economically feasible to ship grain to the river from all parts of Illinois?

A. Well, the river runs right in the middle of Illinois, pretty well, and goes all the way down. We have the Mississippi on the other side, and if we can use it one place in the cross haul, this is just the beginning.

Q. You stated, at the beginning of your testimony, that the people in the Chicago area were the ones that were [fol. 604] affected at this time?

A. That is right.

Q. Not in the future. And you stated that there were about 40 per cent—no, pardon me. I don't believe you stated how many of your members in this Chicago area are affected?

A. Well, they are practically all, more or less.

Q. Are you prepared to submit a list of your members in the Chicago area who are affected and make sample ones available for cross examination?

A. Oh, no, sir, I am not.

Mr. Brown: Would you accept such a statement without cross examination?

Mr. Macaulay: Oh, no, we want to cross examine.

Mr. Brown: When?

Mr. Root: For tomorrow.

Mr. Brown: In other words, you would like to prolong this just as much as you can. That seems to be the object.

Mr. Root: I didn't hear you, Mr. Brown.

Mr. Brown: You are trying to prolong this just as much as you can. Now, you want this man to bring in a list of those who are hurt so you can bring them back for cross examination.

Mr Macaulay: This man is making a statement as to a representative group of people who are injured and we deny they are. If we have an opportunity to cross examine, we think we can show conclusively for the record——

[fol. 605] Mr. Brown: We have got some back here and you can cross-examine them.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: No, sir.

By Mr. Macaulay:

Q. You state that there are times when you have no profit at all?

A. That is right.

Q. You state that there are times when you have no profit you otherwise would have had?

A. The farmer.

Q. What would you say is a normal rate of profit for a country elevator operator per bushel?

Mr. Cole: Mr. Examiner, may I object to that as being completely irrelevant.

Exam. Taylor: It is outside the scope of his direct examination.

Mr. Cole: Outside the scope of direct examination.

Exam. Taylor: And on that point I will——

Mr. Macaulay: He stated about profits, your Honor, and I would like to know what he considers to be a proper rate of profit, and that seems to be the basic factor here. If they can make sufficient profit with the barge competition, then they would continue to stay in business; have no com-

plaint. I want to know what he regards as a fair profit for a country elevator operator.

[fol. 606] Mr. Day: Now, Mr. Examiner, counsel is mistaken on what the witness testified to. He didn't say that he made a profit on all this business. I recall that he said he was losing money on some of it; there was no profit at all in such transactions as that. It isn't a degree of profit.

Mr. Macaulay: He operates an elevator and he has made a statement as to the effect on his profits of this barge competition. And I want to know how badly he is affected, and the only way I can tell that is to have him state what a normal profit is.

Exam. Taylor: It is all stated on his direct, Mr. Macaulay.

Mr. Macaulay: What he considered a normal profit?

Exam. Taylor: Yes, he doesn't make a profit on a good bit of the business.

Mr. Macaulay: Yes, but he does make it on some. Now he is complaining because he doesn't make enough. His measure of what is enough can only be determined by his statement of what he considered to be a normal profit.

Exam. Taylor: What might be profit at one time might not be profit at another, under the buying and selling conditions of grain.

Mr. Macaulay: I think it is proper for him to state the range of profit.

Mr. Day: If we are going into the question of the amount [fol. 607] of profits from each of the concerns interested here, we are going to be here from now till doomsday.

Mr. Cole: Mr. Examiner, may I enter a formal objection to the question, again stating that it is irrelevant and completely immaterial.

Exam. Taylor: I will sustain the objection.

Mr. Macaulay: Note an exception.

Exam. Taylor: Note an exception on the record.

By Mr. Macaulay:

Q. You state that you have heard of some grain being trucked from Steward to the river. What point of the river did you hear it was trucked to?

A. The statement was—I couldn't say whether it was La Salle or Ottawa or—it wasn't Morris.

Q. Do you know the quantity that was involved?

A. No. I have stated I don't know that to be a fact. You hear lots of things but I don't know that there hasn't been any trucked, either.

Q. Do you know why the rates were reduced from Steward if there is no competition from the barge?

A. I suppose that their reduction is so very little that it practically amounts to nothing at Steward. But it was a continuation——

Q. What is the reduction?

A. Not over a cent or cent and a half. Maybe if these interstate rates are here, you could tell.

[fol. 608] Q. Have you ever shipped any grain to Chicago by truck?

A. No, sir, I hope never to.

Q. Do you know of any people in Steward that have ever shipped any grain to Chicago by truck?

A. Personally, I don't know of individual cases, no.

Q. Do you know of any of these members in the Northern district that shipped by truck to Chicago?

A. I don't think many of the elevators up there have done any shipping by truck themselves. There have been some of their customers that have taken grain in. From the town of Watertown, which is probably 20 miles closer to Chicago than Steward, Mr. Wakefield tells me that lots of it has moved to Chicago and some to Morris.

By Mr. Brown:

Q. By truck?

A. That is right.

By Mr. Macaulay:

Q. Is any grain shipped by water from any point other than La Salle or Ottawa or Morris from Steward?

A. I wouldn't know. I don't know that there has any been shipped from Steward. I hope there hasn't been any. I hope there never will be.

Q. Would you say that the grain dealers who have country elevators, have a vested interest in the grain handling business, if it can be shown that the farmers themselves will be hurt in the event that the barge reshipping rates are eliminated, that as the choice between the two, the coun-

[fol. 609] try elevator men shouldn't be hurt.

Mr. Enoch: I think that——

Mr. Brown: I object to that.

Exam. Taylor: It is too involved, in the first place.

Mr. Enoch: Speculative.

Exam. Taylor: Speculative and involved. If you can cut it down so that the witness can grasp it,——

Mr. Brown: Ask him five years from now; maybe he can tell you.

By Mr. Macaulay:

Q. I am talking about the present day. You have made a great point that the investment of the country elevator is being jeopardized because of barge traffic and you have then stated that because of the small margin of profit——

A. Wait a minute, I didn't say——

Q. (Continuing:) —because of the small margin of profit, the farmers are getting a higher price for their grain than they would in the event there were not reshipping rates?

A. No, I didn't make that statement.

Q. What did you say?

A. I said that——

Mr. Brown: Just wait a moment. Ask the question: don't ask him what he did say.

Mr. Macaulay: He said he didn't say it. Let him say what he did say.

Mr. Brown: Repeat the question, please.

[fol. 610] Exam. Taylor: Read the question, Miss Reporter.

(Question read.)

Mr. Brown: Mr. Examiner, this witness has shown that when you reduce the volume of grain that a country elevator has been handling, part of his equipment is idle and consequently useless to him. Whether or not it affects the prices hasn't got anything to do with it. He is talking about the grain being taken away from his usual facilities over to another place that never was in competition to him in recent years. That is his story.

Mr. Macaulay: What is the ruling? I asked him that premise and he said he didn't make the statement.

Exam. Taylor: He said he didn't make the statement. That was the answer.

Mr. Macaulay: All right, I will break it down.

By Mr. Macaulay:

Q. In your opinion, are the farmers getting any benefit from the barge traffic on the Illinois waterways?

Mr. Brown: Just a moment. I am going to ask the witness if he personally knows anything about what the barge is paying for grain, and to what elevators do you refer?

Mr. Macaulay: If you have to confine it that way, I believe that all of his testimony should be stricken, because we have allowed him to proceed in a very general way, as a man who is the head of an organization and had knowledge of the facts. If you wish to be technical about it, I think [fol. 611] that all of his statements should be stricken and start over again.

Mr. Brown: No, if you will tell him what prices are being paid for barge grain and what prices he can get for his grain at Chicago and the amount of transportation deduction from that, then he would be able to answer. You are asking him to give you what the price is that is paid for barge grain. He doesn't know.

Mr. Macaulay: I believe that his statements, now that I recall, are sufficiently clear; I will not proceed further.

Mr. Root: May I ask one or two questions?

Exam. Taylor: Is this something that has come up on cross-examination?

Mr. Root: This is an entirely new subject on cross-examination, something I overlooked. I just wanted to ask him, this man, a very few questions; won't get into this matter at all.

By Mr. Roote:

Q. Mr. Culbertson, are you familiar with the Co-operative Allied Grain Dealers Corporation at Morris?

A. No, sir.

Q. Are you familiar with the Farmers Square Deal Corporation at Morris.

A. I know the manager.

Q. Is he a member of your organization?

A. No.

Q. The Farmers Elevator at Zion?

[fol. 612] A. Yes, sir.

Q. Mr. McClellan at Dwight?

A. Yes, sir.

Q. Charles Treasure at Gardner?

Exam. Taylor: Wait a minute, we are trying to get this on the record straight. Will you please give the names of the gentlemen so that the reporter can get them?

Mr. Root: I am sorry.

By Mr. Roote:

Q. Mr. Barkley in Yorkville?

A. That is right.

Q. There is no need for me to state any further names. But you are acquainted with the fact that a number of your members have organized what is known as the Co-operative Allied Grain Corporation in Morris?

A. That is right.

Q. Now, do you know whether those members whom we just mentioned are still in business as independent dealers?

A. I think they are.

Q. They are not brokers in grain, are they?

A. They do act in certain instances as brokers, I have been told.

Q. You just describe how they act as brokers, will you, please.

A. Well, I consider a man a broker who buys grain that doesn't handle it through facilities.

Q. In other words, he is a broker unless he runs grain through his house, is that right?

[fol. 613] A. Well, he is not exactly an elevator operator.

Q. He still buys grain from people, doesn't he?

A. That is right, but the fact that he may have a house at Morris and he goes out to Dwight and buys grain to take to Morris, that, I would consider that as a brokerage business for the Morris Elevator, for the river elevator. Now, if he were to take it through his elevator, then I would think he was a grain dealer at Morris.

It has always been an accepted idea down through nearly 50 years that we have maintained an organization, that a country elevator dealer, to be in the business, must have adequate grain handling facilities and operate them. Now, I am just giving you the rules that have been pushed down through 50 years, the rule of the grain trade.

Q. Would you consider Mr. McClellan at Dwight a man in the grain business?

A. I would when he handles grain through his elevator at that end of it at Dwight, if he does, and he also is a

broker, that I would consider. Now, he might or he might not.

Q. In other words, if he ships by rail he is an elevator operator, and if he happens to sell the grain to a river elevator and truck it down there for shipment by water, you consider him a broker, is that right?

A. No, sir, a man can be an elevator operator, he could ship by water, he could ship by truck, he could ship by rail [fol. 614] providing that he had adequate facilities to store his grain, to handle it at that particular point. In my judgment, he would be a broker if he started on the telephone or rode out over the country and bought grain to go to some other points. That would be a brokerage business.

Q. Then, so far as you know, Mr. McClellan and the other members——

A. Is both a broker and a grain dealer.

Q. Will you pardon me until I finish my question?

Mr. Day: Mr. Examiner, I object to any further questions along this line. It seems to me it is just interminably dragging the thing out. It is very clear from the answers, what he regards this—what business he regards this man at Dwight in. He is doing an elevator business where he puts the grain through his elevator. Where he buys grain and it is carried over to the barge elevator at Morris, he is in the brokerage business. I presume if he has got an automobile sales room in connection with his elevator at Dwight, he is in the automobile business. It is very clear.

Exam. Taylor: Do you so understand it, Mr. Root?

Mr. Root: What is that?

Exam. Taylor: Do you understand it that way?

Mr. Root: Why, no, the fact isn't at all what the witness thinks. He doesn't understand how this river business is handled.

[fol. 615] Exam. Taylor: That was the answer to your question.

Mr. Root: If that stands as his answer, I just want it, because it is apparent he doesn't understand how this is handled.

Exam. Taylor: You can rebut that.

Mr. Root: All I was doing was laying a foundation to show his lack of knowledge.

Exam. Taylor: Is that all the cross examination? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.
Mr. Brown: Mr. Farlow, please.

LAWRENCE FARLOW, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name and address and occupation?

A. Lawrence Farlow, Bloomington, Illinois.

Q. What is your business?

A. Secretary of the Farmers Grain Dealers Association of Illinois.

Q. Have you a statement to make?

A. I have a statement which I would like to read.

Q. Please proceed.

A. The organization which I represent is a service organization for 240 farmers elevator companies in Illinois. [fol. 616] These companies are owned and controlled by approximately 30,000 farmer stockholders and serve approximately 60,000 farmer patrons. They represent an investment of about $5,000,000 in grain handling facilities. Substantially all of these facilities were especially constructed to accommodate the shipment of grain by rail. Their principal business is that of purchasing grain from farmers in their respective communities, assembling it in carload lots and forwarding it to the most advantageous terminal market or processing plant.

One of my duties as secretary of the association is to deal with traffic and rate matters that affect any considerable number of our member companies. For more than ten years I have served as chairman of the Grain Committee of the Mid-West Shippers Advisory Board and in that capacity it has been my duty to make quarterly estimates of grain car requirements for the information of the shippers and carriers. This has required a special study of grain production and changing modes of transportation.

As early as 1932 we observed that trucks were making their appearance as a factor in the transportation of grain. By 1935 grain was arriving in Chicago by truck in such large volume that it presented to the rail carriers, and country elevators served by rail carriers, a problem of competition. In some instances the grain was purchased by the trucker from an individual farmer and resold to an elevator [fol. 617] operator in Chicago. In other instances the grain was transported from the farm to Chicago by an individual trucker and sold to a Chicago elevator for the account of the farmer producer. In both instances the local elevator and the railroad serving the local station suffered a loss of business to the extent of such trucking operations.

A further study of this problem revealed that the principal grain being trucked to Chicago was corn and the point of origin was in most instances within a radius of 100 miles of Chicago. Our Association, in cooperation with other organizations and individuals interested in the country grain business, called upon the railroads to revise their short-haul rates, giving more consideration to distance. It was our opinion, that, if local rates from points within this hundred mile radius from Chicago were made about equal to the actual cost of trucking, country elevators and railroads serving them would be placed in a fair competitive position.

During the year 1937 most of the rail carriers in the Chicago area had in effect local rates to Chicago which were quite effective in meeting truck competition. However, the volume of corn arriving in Chicago via the Illinois Waterway in 1937 exceeded that of any previous year. The railroads permitted their local rates to expire on December 31, 1937 and, as a result, the total amount of grain received in Chicago by truck during the year 1938 amounted to 3,193,000 bushels and the amount arriving by the Illinois waterway [fol. 618] was 11,467,000 bushels. In April 1939, in keeping with our urgent request, the carriers serving the Chicago area again published local rates on corn to Chicago which are sufficiently low in most instances to meet competition, if all of the forms of transportation serving that production area were treated as a local movement. However, on account of this discriminatory tariff which permits the reshipment of grain arriving in Chicago via the Illinois Waterway at a rate equal to that applying to grain arriving

in Chicago by rail on the higher Illinois proportional rate, we find that the local competitive rates on corn are ineffective from certain areas. Trucks that had been hauling corn to Chicago changed their course to an Illinois River loading point in order that the grain which they originated might have the advantage of the reshipping rate which was applied to barge grain but could not be applied to grain which was trucked directly to Chicago.

It is our opinion that the tariff which permits the reshipment of ex-river grain from Chicago to New York at a 26 cent rate was not intended to apply to that kind of traffic at the time it was approved, since there was no such traffic of any consequence when the tariff was published.

Mr. Belnap: I object to that type of testimony from a man who is not qualified to speak for the rail carriers. He is telling you what the rail carriers intended when they put certain items in the tariff. If he can qualify as having [fol. 619] participated in the preparation and publication of railroad tariffs in respect to that matter, I will withdraw my objection to that question.

Mr. Day: The witness has shown familiarity over a long period of years with grain and rates applicable on grain from this territory. I think he is in a position to know.

Exam. Taylor: Objection overruled. Proceed.

The Witness: It is discriminatory in that it allows shipping privileges on a certain class of grain in Chicago which has no past history so far as a rail movement is concerned, which privileges are denied to other classes of grain in Chicago of the same kind, such as grain arriving in Chicago by truck or on a local rail rate.

We have no desire to deprive the grain producers of the Illinois River Valley of any natural transportation advantages the River may afford them. In this hearing we do not seek to deprive them of certain artificial advantages, such as the development and maintenance of a navigable channel at the taxpayers' expense. But we do seriously and emphatically object to a railroad tariff which adds to these natural and artificial advantages a discriminatory advantage in the form of reshipping privileges on ex-barge grain, which privileges are not accorded to ex-truck grain or grain arriving in Chicago on a local rail rate.

Every member of our organization engaged in the busi- [fol. 620] ness of shipping grain by rail, and located at a

point having a combined truck and barge cost to Chicago less than the Illinois proportional rate, is directly and adversely affected by the tariff which discriminates in favor of ex-barge grain. Every member located at a greater distance from the river is indirectly and adversely affected, since any diversion of the grain movement from the railroads to other forms of transportation must necessarily increase the cost of transportation to those who continue to ship by rail.

One of the purposes of a farmers cooperative elevator is to handle through one elevator a large volume of business, thereby reducing the unit cost of handling. These companies have a certain amount of fixed overhead expenses. If the farmers in a community own an elevator with a fixed overhead of $9,000 a year and produce a total of 450,000 bushels of grain, all of that grain can be handled through the elevator at a cost of 2 cents per bushel. If one-third of these farmers should truck 150,000 bushels of that grain to the river at a half cent profit to themselves, the cost of handling the other 300,000 bushels through the elevator would be increased to 3 cents per bushel and the community, as a whole, would lose $2,250 as a result of the truck invasion. This constant drain of a substantial portion of the business from a large number of farmers elevator companies, which tends to weaken their morale and their finan- [fol. 621] cial structure, is my reason for taking an interest in this case.

For the reasons above stated, this Association respectfully requests that the tariff amendments proposed by the carriers to cancel reshipping privileges on ex-barge grain be approved and permitted to go into effect at the earliest possible date.

By Mr. Brown:

Q. Mr. Farlow, do your duties require you to keep in close contact with the members of your organization?

A. Yes, that is one of my duties.

Q. And were you instrumental with others in inducing the railroads to give these reduced so-called lake local rates on corn to Chicago in an effort to partially meet this barge competition?

A. I was.

Mr. Brown: Take the witness.

Exam. Taylor: Any questions by counsel? (No response.) Cross examine.

Cross-examination.

By Mr. Belnap:

Q. What do you hope will be the result of what the eastern lines propose, Mr. Farlow?

A. Pardon me, I didn't get the question.

Exam. Taylor: Read the question.

(Question read.)

The Witness: We hope the result would be to restore a larger per cent of the grain traffic to the railroads.

[fol. 622] Q. In order that the facilities of your members may be used?

A. That is one reason, yes.

Q. Have you, personally, or your members any other interest in the case?

A. Yes, our members are vitally interested in every phase of the case because all the elevators that I represent are owned and controlled by farmers, therefore the producers' interest is the first interest.

Q. As far as the effect of the case, you hope it will put the grain back through these elevators of the railroads?

A. Yes, sir.

Q. Is there any other result that they hope to achieve specifically? I don't understand these other phases or generalities. I would like to be specific.

A. That is the purpose, yes.

Q. The only purpose, isn't it, from your standpoint?

A. Well, other purposes would be served by putting grain back on the railroads; such as putting the railroads in a position to give better service.

Q. That fact, getting the grain into railroad cars is the only thing you hope to accomplish, isn't it?

A. That is the direct purpose. Other things will result through that.

Q. Do you hope to truck the grain direct to Chicago?

A. We do not.

[fol. 623] Q. I thought you complained because trucking was discriminated against.

A. I said it was discrimination to allow a reshipping privilege on grain not accorded to truck grain.

Q. Do you complain of that?

A. I pointed it out as discrimination.

Q. I am asking you, do you complain of it?

A. Yes, because I am against any rank discrimination in forms of transportation.

Q. Do you insist truck grain should be treated the same as barge grain?

A. It should be treated the same as barge grain in Chicago. Both should be treated as a local movement.

Q. That is two answers. Take up the proportion on which they should be treated the same. Is it your position in this case that if the proportionals are to continue to apply on ex-barge grain, they should be made applicable on ex-truck grain?

A. We think it would be fair.

Q. Do you think it should be done?

A. I am not recommending it.

Mr. Day: Now, Mr. Examiner, Mr. Belnap's question deals with discrimination or the question of prejudice and preference. Now, obviously, I think Mr. Belnap ought to know that where prejudice or preference is found, the carriers have the alternative of either eliminating the one or [fol. 624] giving the other the same as the first has. It isn't a question of curing a discrimination by one means alone. The carriers have the option of doing it either way.

Mr. Belnap: I didn't ask what the carriers should do.

Mr. Day: You are asking him about the question of preference and prejudice. That, as I say, can be done in either one of two days, in a case like this.

Mr. Belnap: I still ask him if he complains of discrimination. He says he does.

Mr. Day: Yes, but you or this witness wouldn't be able to dictate to the railroads how they would cure a discrimination.

Mr. Belnap: I am not asking to dictate to the railroads. I am asking as to the interest of this man and his members to have the proportionals applied on ex-truck grain on the assumption they will continue to apply on ex-barge grain.

Mr. Day: My objection is, you are assuming discrimination can be cured in only one way.

Mr. Belnap: No, the interest of his membership can be stated in only one way. I would like to know which way that is.

Mr. Day: You certainly aren't binding the railroads by any commitment of that kind.

Exam. Taylor: Is there any question about the question of making proportional rates on ex-barge grain in this proceeding, Mr. Belnap?

Mr. Belnap: The question is whether they should be con-
[fol. 625] tinued or not, as I understand it.

Exam. Taylor: Ex-truck?

Mr. Belnap: Ex-barge.

Exam. Taylor: Yes, sir, ex-barge. But now you are bringing in ex-truck.

Mr. Belnap: I am bringing it in only because the witness in his direct argued in some length that the present practice is discriminatory against ex-truck grain.

Exam. Taylor: Isn't that really elemental?

Mr. Belnap: I am trying to find out as to the personal interest of this Association. You can talk in the abstract about all sorts of discrimination. I should think the people and the Commission who appear before it would like to know what their interest is. I will desist if you think I shouldn't go any further with it. The witness obviously doesn't want to answer.

Mr. Brown: I think he stated what preference was.

Mr. Belnap: I shouldn't think a claim of discrimination is made in good faith and honesty if the real interests of the organization would be adversely affected by the proportionals on ex-barge grain, and from his general testimony, I am merely assuming that his interest would be adversely affected by that.

Mr. Cole: Mr. Examiner, haven't we overlooked another very important distinction between an I. & S. case and a formal complaint. A formal complaint, involving a com-
[fol. 626] plaint as to undue prejudice, of course, must show that somebody comes in and complains about it. When we have an I. & S. case, and this docket is an I. & S. case, the Commission examines not only the question of the reasonableness of the rate, but the act says examines as to the lawfulness of the rate.

Exam. Taylor: All questions are open in an I. & S. case.

Mr. Cole: That is correct; whether he complains about it or not.

Mr. Childe: Mr. Examiner, may I suggest on that point that the test of whether a rate is prejudicial or discriminatory is whether the prejudice or discrimination may be removed by either increasing the low rate or reducing the high, and then——

Exam. Taylor: That is fundamental.

Mr. Childe: Equally remove the discrimination. In order to test this witness' charge of discrimination, isn't it fair to find out whether what he complains of could be removed by either alternative?

Mr. Day: That isn't the way Mr. Belnap approaches it. He is confining his question to removing prejudice in one specific case.

Mr. Belnap: Only for the purpose of inquiry, what is the interest of this man who comes in and makes the charge; to test his sincerity.

Mr. Cole: Mr. Examiner, may I have the floor on that subject. I might perhaps make it specifically definite. In [fol. 627] an I. & S. case, we show you the various influences and again I say that nobody, including the Commission, would be interested at all in whether this man objected to it, if we show it is unlawful.

Mr. Belnap: To save time, I will pursue the point no further.

Mr. Cole: Thank you, Mr. Belnap.

Mr. Belnap: I am trying to get through with this case.

Mr. Cole: So am I.

By Mr. Belnap:

Q. Are you familiar with the rates east of Chicago and their application under the present proposed tariff?

A. Not in a detailed way.

By Exam. Taylor:

Q. But you did have knowledge of that New York rate that you mentioned?

A. Yes.

Q. You made specific reference to a proportional rate?

A. Yes, I did ascertain that the proportional rate or that

the rate which applied on ex-barge grain to New York was 26 cents.

By Mr. Belnap:

Q. Will that rate also apply on grain that moves from Bloomington, where you reside, to Chicago?

A. If shipped from Bloomington on an Illinois proportional rate to Chicago?

Q. Well, if shipped on whatever rate is applicable on rail from Bloomington to Chicago. Will that 26 cent rate apply when the grain moves east?

[fol. 628] A. If it were shipped on a local intrastate, it would not. If shipped on the Illinois proportional rate, it would.

Q. Is there an Illinois intrastate lake local non-transit restricted rate from Bloomington?

A. I don't know.

Q. Well, doesn't the exhibit show that there isn't any such rate from Bloomington, where you reside, then on a movement to Chicago, by the rail carriers' rate to Chicago, would that 26 cent rate apply yet?

A. I will have to hear the question.

(Question read.)

By Mr. Belnap:

Q. On a movement east.

Mr. Brown: As a part of the through movement.

By Mr. Belnap:

Q. Does it apply on the movement beyond Chicago?

Mr. Brown: As a part of the through movement, so performed.

By Mr. Belnap:

Q. Part of a separate movement from Chicago. What I want to know, how the tariff applies.

A. I can't answer any further than to say it is my understanding this rate applies from Illinois points only, when grain is shipped on what is known as the Illinois proportional rate.

Q. What is the Illinois proportional? Do you know anything about that?

A. I can't explain the intricacies of that.

Mr. Belnap: The witness just isn't familiar with the rates in which we are dealing.

[fol. 629] Exam. Taylor: Any further cross examination?

By Mr. Root:

Q. Mr. Farlow, can you state specifically an elevator in the vicinity of Morris that has been injured by the present practice of shipping of grain over the Illinois waterway under existing tariffs?

A. I stated in a general way that the elevators are adversely affected by these reshipping rates.

Q. Pardon me; you didn't understand my question. I am asking for a specific elevator. Can you name one?

A. Yes, Cullom Farmers Grain Company, Cullom, Illinois; Kempton Farmers' Grain Company, Kempton, Illinois; Essex Farmers Elevator, Essex, Illinois.

Q. Take one at a time. Explain how that particular elevator, the first one at Cullom, was hurt because of the waterway.

A. Those truckers are going into the territory and trucking a certain amount of grain from the farms directly to an Illinois River loading station, without giving the local elevator an opportunity to perform any service on that grain.

Q. Has that elevator operator at Cullom made any effort to sell grain personally or through an elevator located in Morris?

A. I couldn't explain the efforts he has made in that direction.

Q. Then you don't know whether or not he has tried to compete with people shipping over different avenues of transportation, do you?

A. He has complained to me he is being injured by this [fol. 630] truck competition.

Q. But you don't know whether he has endeavored to compete by using the same avenue of transportation that his competitors use?

A. No, sir, I don't know.

Q. And is it not true that these competitors are paying

the farmers more money than he can pay them and still ship it by rail?

A. Well, the difference is very slight. To a farmer, perhaps, residing in the territory near the river, they might pay a little more.

Q. Isn't it a fact the reason the farmer sells to one man rather than another one, where he can get the best price? We all admit that, don't we?

By Exam. Taylor:

Q. Do you understand the question?

A. No, sir, I don't understand the question.

By Mr. Root:

Q. I say isn't it generally recognized, the farmer sells grain where he can get the best price?

A. Yes, that is common practice.

Q. Well, you mentioned a man down in some other town. What was that, Kempton?

A. Kempton.

Q. Can you tell us how he has been injured?

A. He will be on the stand to testify himself.

Q. You don't know whether or not he has made any at- [fol. 631] tempt to make use of the Illinois waterway, do you?

A. No, I don't.

Q. Then your statements are rather general, without specific information, is that correct?

Mr. Day: I object to that. The statements of the witness stand in the record for what they are worth.

Exam. Taylor: Objection sustained.

Mr. Root: That is all.

Mr. Childe: I would like to ask a question.

Exam. Taylor: Mr. Childe.

By Mr. Childe:

Q. Do you speak for any producing farmers or just for elevator operators?

A. The organization which I represent is made up of farmers cooperative elevator companies, all of which are owned and controlled by farmers themselves, so that from

the—going back to the root of our organization, it is producer interest entirely.

Q. Are any of the farmers who are owners of these elevators located in the Illinois River Valley where they are getting the benefit of these higher prices?

A. Yes.

Q. And do those farmers who are now getting those benefits authorize you to come in here and try to get the rates increased to the east?

A. My board of directors authorized me to came here by [fol. 632] unanimous vote.

Q. And did they authorize you to seek higher rates from Chicago to the east?

A. They authorized me to support the cancellation of reshipping rates on ex-barge grain.

Q. Do they understand that you are here advocating an increase in rates on grain from the Illinois River territory to the east?

Mr. Enoch: I object to that.

Mr. Day: I object to that, whether they understand it or not.

Mr. Childe: May the witness answer?

Mr. Enoch: He hasn't any right to solicit business here.

Mr. Childe: I just want to understand the man's position.

Mr. Day: He has been authorized by unanimous vote of his board of directors, as I understand it, to come here and testify and support the proposed schedules.

Exam. Taylor: Isn't that sufficient information for you?

Mr. Childe: I would like to have the witness say whether they are seeking, actually seeking to increase the rate from Chicago——

Exam. Taylor: He stated he was authorized by his board of directors to come up here and defend this action.

Mr. Childe: I presume from that, the answer is yes, is that your understanding, Mr. Examiner?

Exam. Taylor: My understanding from this witness is [fol. 633] that his board of directors tells him to come up here and support the respondent's desire to make the proportional eastbound rates applicable on ex-barge grain. That is what he stated.

Mr. Childe: What I am trying to get at is whether these farmers or these elevators are merely complaining about

what they concede to be a discrimination, or whether they are asking the Commission to take only one action, namely to increase the rates.

Exam. Taylor: Well, put it in that form, then.

Mr. Childe: All right. Can you answer that?

Mr. Enoch: I object to that because I don't understand that there is any proposal here to increase the rates to 90 per cent or 99 per cent of the farmers in the state of Illinois.

Exam. Taylor: Put your question first. Your question is too general in the first place, Mr. Childe.

By Mr. Childe:

Q. What I am trying to get at, Mr. Witness, is this: Do your farmer elevators complain because they consider that the application of these proportional rates or reshipping rates from Chicago to the East discriminate against the rail shipper, or do they complain because they think that the rates are too low?

A. Well, it will take a rather long answer to answer his question.

Mr. Cole: Just a minute, please. We have, if the Examiner please, a definite proposal here, an I. & S. proceed- [fol. 634] ing. The tariffs have been filed and that tariff proposition proposes to do one thing in one way. And this witness has testified that he comes in and supports the respondents in doing the thing just that way. He hasn't complained because it has not been done another way. It is answered right in the record, just as clear as crystal, so I object to his question.

Mr. Childe: Mr. Examiner, I am asking whether the people he speaks of would be satisfied by the removal of what he considers to be a discrimination, the other way.

Exam. Taylor: What other way?

Mr. Childe: By reducing or applying the reduced rate on grain—

Exam. Taylor: What reduced rate?

Mr. Childe: The reshipping rate from Chicago to the East on grain that moves from their elevators by rail on the intrastate Illinois rates.

Mr. Enoch: I understand that question to be this: Does this witness object to making the proportional rate the local rate out of Chicago.

Exam. Taylor: Is that what you mean? I don't get the question at all.

Mr. Childe: As I understand it, this witness' testimony, he says that they got the railroads to put in lower intrastate rates from their shipping points to Chicago to meet truck competition. He says that the reshipping rates here [fol. 635] involved don't apply in connection with those rates, and that that is a discriminatory situation in comparison with the application of the reshipping rates on grain that moves by barge into Chicago. Therefore, he says he advocates the cancellation of the reshipping rates on the barge grains. Now, what I am trying to develop is whether the interests he represents would be satisfied if the discrimination was removed the other way, namely, by applying the reshipping rates out of Chicago in connection with the application of the Illinois intrastate rates inbound.

Mr. Brown: That is not before us, Mr. Examiner.

Exam. Taylor: It isn't before us, and furthermore, there would be, as I have seen from this record, those intrastate rates would be considerably higher than the barge rates to Chicago, in any event.

Mr. Childe: I don't believe that is a fact, Mr. Examiner. I think the record already shows what the comparative rates are. For instance, from Morris, Illinois, the record shows a claimed barge rate of four and a fraction cents.

Exam. Taylor: Yes.

Mr. Childe: And an Illinois intrastate rail rate of 5 cents; practically the same thing.

Mr. Brown: On corn only.

Mr. Childe: Now, the question I have in mind is if the reshipping rate applied in connection with the 5 cent rail rate, thus removing what he is claiming to be a discrimina-[fol. 636] tion, would that satisfy his complaint?

Exam. Taylor: The witness may answer if he knows.

The Witness: That subject has never been before our board of directors for consideration.

Mr. Childe: Thank you.

Exam. Taylor: Is that all, Mr. Childe?

Mr. Childe: Yes.

Exam. Taylor: Mr. Macaulay.

By Mr. Macaulay:

Q. Mr. Farlow, is it your understanding, as it was Mr. Culbertson's, that there are about 1,700 elevators in the state of Illinois?

A. Approximately that number, yes.

Q. And you stated that you represent 240 farmer elevators?

A. Yes, sir.

Q. Do you have any members around Paris, Illinois?

A. Well, it would depend on what you mean "around." We have members within 50 miles of Paris.

Q. Do you have any that are affected by the Paris market?

A. I haven't had any complaint from a member regarding the Paris market.

Q. Do you know whether the Illinois Cereal Company is in Paris?

Mr. Bradford: Mr. Examiner, is that involved here? We are short on time. There isn't anything in this complaint about Paris, Illinois.

Exam. Taylor: I don't see the point of this.

[fol. 637] Mr. Macaulay: They are making a big point that the barge movement is the source of their difficulties. I want to know whether or not at points which are beyond the scope of the river, they are charging any competition from trucks. In other words, it seems to me that if I can establish that at points beyond the influence of the river there are processing plants to which grain is being shipped, that that may explain some of the difficulties of the country elevators.

Mr. Bradford: I submit, Mr. Examiner, that is entirely outside of this proceeding.

Mr. Brown: Paris, Illinois, is only a few miles from Terre Haute, and so as to give you some idea of the location of Paris.

Mr. Macaulay: That is right, and that is why I say that, because I think it is a restricted area that is affected by the river movement.

Exam. Taylor: I think everybody will agree to that. These parties over here and the railroads will all agree to that, so why go into it.

Mr. Macaulay: I believe, however, that in his objections filed with the Interstate Commerce Commission, he stated

it would spell ruin to 90 per cent of the country elevators. If he is going to make a statement of that kind, I would like to show he restricted himself to a very small area.

Exam. Taylor: Did he say it on the record here? That is [fol. 638] not part of the record, you know.

Mr. Macaulay: That may not be part of the record but that is a statement he made which has an influence on the question of whether or not the rate, the rates should be suspended. Of course, first of all, I should probably ask if they maintain that position.

Exam. Taylor: Yes.

By Mr. Macaulay:

Q. All right, I will ask you if you still maintain the position that the reshipping rates on barge grain will work an injustice to 90 per cent of the country elevators of Illinois?

A. I never made the statement before, but I will say it now, that I do.

Q. And then will you still state that your members around Paris, Illinois, Terre Haute—well, you don't go into Terre Haute, but around Paris, Illinois, are affected by the barge traffic to Chicago, barge reshipping rates applicable at Chicago?

A. I said all of our members anywhere in the state were affected by that rate indirectly, in that the diversion of traffic from railroads to other forms of transportation necessarily means increasing the cost of transportation to those who continue to use railroad service.

Q. Have you found that to be a fact within the past ten years or five years that your cost has been increased?

A. Yes.

Q. And state the amount of that increase.

[fol. 639] A. 5 per cent, I believe.

Q. And the factor there is because of the loss of revenue to the barge?

A. I think that was a factor, an important factor.

Q. On what do you base your knowledge?

A. That is my opinion.

Q. On what do you base your opinion?

Mr. Macaulay: It is clear that the man doesn't have a basis for such an opinion.

The Witness: Yes, I can answer you. The records show that the diversion of grain traffic in Illinois in 1937 was about 5 per cent of the total grain movement. The Interstate Commerce Commission permitted rates on grain to be increased 5 per cent. Therefore, the two items seem to coincide and would indicate that must be the cause.

By Mr. Macaulay:

Q. You state that during that same period, there was the reduction in rail rates to Chicago in this intrastate area, in some instances as much as three-quarters of the rate?

A. I don't understand the question.

Q. In spite of the statement that rail rates have been increased by reason of the diversion to barge, and I presume you mean trucks also, because you testified about the influence of trucks; in spite of that loss of revenue, you say there is a reduction in the intrastate—reduction in the [fol. 640] rates by reason of the intrastate rates?

By Exam. Taylor:

Q. Do you still understand it?

A. I don't understand the question at all.

Mr. Macaulay: All right. Let me restate it.

Mr. Brown: You have already stated there has been a reduction in the state corn rates to Chicago. If that is what you want to get out of him, why don't you ask him that?

Mr. Macaulay: Yes, but it is during the period they were claiming an increased rail charge because of a diversion. I think it is clear.

Exam. Taylor: You withdraw your question? Is that all?

Mr. Macaulay: I will withdraw the question.

Exam. Taylor: Anything further?

By Mr. Macaulay:

Q. Are you familiar with the action of the cooperative grain dealers around Morris in establishing an elevator for themselves so that they might get the benefit of the river traffic?

A. Yes, I have been advised of their activities.

Q. Do you know whether or not their association is open to any of your members who might care to become members?

A. No, I don't know on what terms membership is open.

Mr. Macaulay: That is all.

Exam. Taylor: Anything further from this witness? (No response.) Anything on direct? (No response.)

(Witness excused.)

[fol. 641] Exam. Taylor: Next witness, please.

Mr. Brown: Mr. Marks, please.

VERNE L. MARKS, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name?

A. Verne L. Marks, Kempton, Illinois.

Q. What is your business?

A. Manager of the Farmers Elevator.

Q. Is the Farmers Elevator a cooperative elevator operated under the Capper-Volstead Act?

A. No, it is not. It is a cooperative organized under the Act of 1915. It is not a Capper-Volstead.

Q. Now, what is the capacity of your elevator at Kempton?

A. We have two elevators, approximately 15,000 pounds capacity each.

Q. Both under your management?

A. Yes.

Q. On what railroad are you located in Kempton?

A. The Illinois Central.

Q. What is your nearest railroad competitor?

A. About eight and a half miles.

Q. What direction is that?

A. Northeast.

Q. About how far is your elevator located from Morris, [fol. 642] Illinois, if that is the nearest water port elevator to your elevator?

A. It is about, approximately, 38 to 40 miles; some place between that.

Q. How long have your elevators been in operation at their present location?

A. The original company was organized in 1903.

Q. And the same elevator is still in operation?
A. Yes, sir.
Q. Did you understand from the conversations you have had with Mr. Farlow and others that the issue here is whether the Eastern railroads will be permitted to cancel the so-called reshipping rates on grain from Chicago applicable on grain that reaches Chicago by barge? Do you understand that?
A. Yes.

By Mr. Belnap:

Q. What was his answer?
A. Yes.

Mr. Brown: He understands that was the issue.

By Mr. Brown:

Q. Is any grain—first I want to ask you if you have ever trucked grain from your elevator to any points beyond Kempton?
A. I have.
Q. Where did you truck it to?
A. Chicago.
Q. When was that?
A. A year ago, in November.
[fol. 643] Q. Did you ever truck it before there was any barge operation?
A. No, sir.
Q. Why did you truck it to Chicago in this particular case?
A. Trying to meet truck competition.
Q. From Kempton?
A. From Kempton, yes.
Q. To Chicago?
A. To Chicago, yes.
Q. Do I understand that there is still truck competition from around Kempton to Chicago?
A. Not to Chicago; to Morris.
Q. To Morris?
A. Yes.
Q. Is any grain that is grown tributary to your elevator being trucked to Morris?
A. Yes.

Q. This grain, if it were not for the barge elevator, would naturally come to your elevator or to your nearby competitor?

A. Yes.

Mr. Belnap: Might I suggest that the witness not be led.

Exam. Taylor: Yes, try to eliminate leading the witness as much as possible, Mr. Brown.

Mr. Brown: You understand these witnesses are not used to association with men like Mr. Belnap all the time.

Exam. Taylor: Off the record.

[fol. 644] (Discussion outside the record.)

By Mr. Brown:

Q. Have you found that the trucking of grain from your natural territory to Morris has taken business away from you?

A. It has.

Q. Is that principally on corn?

A. Yes, corn and beans. A few beans this fall found their way to Morris.

Q. Have you been taking, some time this year, a lower rate on corn, so-called lake local, than upon other grain?

A. Only on corn.

Q. Only on corn?

A. Only on corn.

Q. Do you remember what that rate is?

A. 8½ cents.

Q. Do you know what your so-called Illinois proportional is?

A. 10½.

Q. Have you still another rate?

A. No, no other than the Illinois proportional.

Q. Have you got a——

A. We have got a local rate which applies to beans only of 12 cents.

Q. And that higher local rate of 12 cents would apply to any grain that came to Chicago that wasn't reshipped east?

A. If it wasn't for the lake rate, yes.

[fol. 645] Q. Have you found that this lake local rate of 8½ cents has helped you to meet the competition of the barge buyers at Morris?

A. Yes, it has; to the extent that if they will stay put, why, I can meet the competition with my 8½ cent rate. But there is a disadvantage when I arrive at Chicago on my 8½ rate, I have to stop, while the barge company go on with their New York grain.

Q. In other words, this barge rate gets this reshipping rate?

A. Yes.

Q. While your lake local doesn't get it?

A. Yes, because it stops at Chicago and I am discriminated against when I arrive here.

Q. It has been your experience that perhaps there was a discount in the price because your lake local rate hasn't the benefit of the reshipping rates from Chicago to the East?

A. It is, yes.

Q. That is your experience?

A. Yes.

Mr. Brown: That is all we have.

Exam. Taylor: Any questions by counsel? (No response.) Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Who are the others with whom you talked to have the issues in this case explained to you, Mr. Marks?

[fol. 64f] A. I talked to Mr. Farlow.

Q. Mr. Brown said "and others," in his question to you.

A. Well, I talked to him this morning.

Mr. Brown: We met for the first time this morning.

By Mr. Belnap:

Q. When you ship on this lake local, you say the grain is at a disadvantage when it gets to Chicago?

A. It is.

Q. Can you measure that disadvantage in terms of money?

A. Well, taking a rate of truck and barge via Illinois River of approximately 7 to 7½ cents, my stuff arriving in Chicago on an 8½ cent local, I am discounted approximately a half cent a bushel.

Q. A half cent a bushel?

A. Approximately, yes, or a cent a hundred.

Q. Sir?

A. Or a cent a hundred.

Q. What happens to the grain that you move into Chicago on your 8½ cent lake local?

A. It is unloaded in the elevators in Chicago.

Q. It has to stop there?

A. It has to stop, yes.

Q. That is, it must be consumed, as you understand it, in the city of Chicago?

A. Supposedly, yes.

Q. That is your understanding of it?

[fol. 647] A. That is my understanding. It is a local rate.

By Mr. Root:

Q. Mr. Marks, what efforts have you made to take advantage of the shipping facilities over the Illinois waterways?

A. I occasionally sell to the Allied Elevators when their price is such that I can.

Q. The Allied——

A. Cooperative, or the Elevators Cooperative.

Q. Are you a member of that organization?

A. I am not.

Q. You are aware of the fact that you can become a member at any time you so desire?

A. I suppose I could.

Q. Well, I mean, that is general understanding in that community, that nobody that is a reputable man will be barred.

A. Yes, sir.

Q. Now, is your position in the grain business any different than the Farmers Elevator in Reddick or the two elevators in Dwight or the Farmers Elevator in Mazon, that is, with reference to so-called live competition that you mentioned?

Mr. Brown: He testified only about his own elevators.

The Witness: I don't know anything about the business of those elevators.

By Mr. Root:

Q. How is that?

A. I know nothing of the business of those elevators at all.

[fol. 648] Q. In other words, what I am trying to bring out is the fact that the trucker, whom you say is taking your business to Morris, would have the same opportunity to truck it from the Reddick elevator territory, would he not?

A. He could do it, but trucking from Reddick territory is lower than what it is at Kempton.

Q. All right, then he would be paying a little more for his grain. The Reddick man would be in a little worse condition than you are?

A. He is a member of the Allied Elevators. He is right in competition with trucking, which reaches me practically the same as Reddick on the northeast side of our territory, and that is the territory that I have to protect by selling some of my stuff to the Allied Elevator.

Mr. Root: I believe that is all. Or just one more question:

By Mr. Root:

Q. Do you have any knowledge as to whether or not the Reddick Elevator man has lost or gained business during the past year?

A. No, I wouldn't.

Mr. Root: I have no further questions.

Exam. Taylor: Mr. Macaulay?

Mr. Macaulay: No questions.

Redirect examination.

By Mr. Brown:

Q. Mr. Marks, did you already state for the record about [fol. 649] the distance via highway from your elevator at Kempton to Morris?

A. Yes, I said 38 to 40 miles; I just don't know exactly.

Q. And do I understand that you have accepted bids from the Allied Grain Co-operative Association, which was better for you than the Chicago bid, and you had the grain trucked to Morris instead of putting it through your own elevator for Chicago?

A. I did.

Mr. Brown: That is all.

Exam. Taylor: Any further cross examination of this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.
Mr. Brown: Mr. Potter.

CHARLES J. POTTER, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name and address?
A. Charles J. Potter, LaRose, Illinois.

By Mr. Belnap:

Q. What town?
A. LaRose.

By Mr. Brown:

Q. What is your business, Mr. Potter?
A. Grain, coal, building material and lumber.
Q. Where are your plants located?
A. Washburn, Illinois, LaRose and Campgrove.
[fol. 650] Q. The first two, are they located on the Alton Railroad?
A. That is right.
Q. On what branch of the Alton Railroad are those two elevators located?
A. Known as the Dwight branch.
Q. The branch running from Dwight to Washington?
A. Yes.
Q. And with another branch running from Varna to Lacon?
A. That is correct.
Q. Do you understand the issues in this case?
A. I think so.
Q. Merely the cancellation of the reshipping rates from Chicago on barge grain?
A. That is right.
Q. Has the Alton Railroad given you a state rate on corn to Chicago, generally known to the trade as the lake local?
A. Yes, they have.
Q. Have you been able to use those rates?
A. To some extent, yes.

Q. Do you sell any corn or other grain to any of the river point elevators?

A. I have.

Q. What points, particularly?

A. Henry and Lacon.

Q. How close are those points to your LaRose elevator?

[fol. 651] A. Lacon is 12 miles, Henry 18.

Q. And also is Washburn about the same distance?

A. About 5 miles further from both places.

Q. And was that grain that you took into your elevator and then trucked over to Henry or Lacon, or did you have the farmers deliver it directly at Lacon?

A. Some was taken from the elevator to the river, some was taken direct from the farm to the river elevator.

Q. On the grain you took into the river elevator and had trucked over to these river points, what was the reason for that, instead of sending it on by rail to some market?

A. The grain I brought into the elevator, the congestion at the river elevators would prevent me disposing of the grain when the farmer wanted to deliver it.

Q. In other words, there wasn't sufficient facilities on the river to take the grain at the time it was offered?

A. That is right.

Q. And you put it in your elevator and then later took it on over to these river elevators?

A. Yes.

Q. Was that because the river point elevator operator was able to bid you a better price than you could get at Chicago on any rates you would have to Chicago?

A. That is right.

Q. Has the barge movement or has the movement to these [fol. 652] river points from territory naturally tributary to your elevator increased?

A. Yes, it has.

Q. Is your position the same as stated by Mr. Culbertson and Mr. Farlow that you are supporting the railroads in their effort to cancel their reshipping rates on the barge grain?

A. I wish to see them cancelled, yes.

Q. You do?
A. Yes.

Mr. Brown: That is all.
Exam. Taylor: Any questions? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. What is your objection to selling to a river elevator at a higher price than you can get at Chicago?

A. I have an investment in the Alton Railroad not only in grain but in other allied lines of business, and if this branch of the Alton Railroad loses this grain business, the rest of my investment is a loss.

Q. That is your interest in the case?

A. That is, and maintaining by own business to operate it for myself there if I can.

Q. And to maintain that interest, you would rather be in a position where the bids for the grain which you handle are lower than they are when they come from the river?

A. That is a matter of opinion.

[fol. 653] Q. That is your opinion, however?

A. I wish to hold whatever business I can.

Q. And if it goes with that, if you have to sell grain for less money, you would like to do that?

A. I am offering a service as well.

Q. As far as the price itself is concerned?

A. If the farmer thinks the price is worth more at the river, then he will have to take it there.

Q. Your choice, however, will be to let him get a lower price and maintain your facilities?

A. I am a farmer as well.

Q. As far as facilities are concerned, your choice is he gets a lower price in order to maintain your facilities?

A. It isn't my wish to deprive the farmer of anything.

Exam. Taylor: Any other cross examination of this witness? (No response.) Witness excused.
Exam. Taylor: Next witness.
Mr. Brown: Mr. Colehower.

LOUIS J. COLEHOWER, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you state your name and residence?
A. Louis J. Colehower, Winona, Illinois.
Q. Where do you reside?
[fol. 654] A. I reside in Winona, Illinois.
Q. And what is your business and where is it located?
A. Country grain buyer and I have elevators on the Illinois Central and also on the Alton.
Q. Where is your elevator located on the Alton?
A. It is on the Dwight branch.
Q. On the same branch as Mr. Potter's elevators?
A. Yes, sir.
Q. And what is the name of the station there?
A. Winona. Both in the same town.
Q. Oh, you have one elevator on the Illinois Central——
A. And one on the Alton, yes, sir.
Q. Has your experience been just about the same as Mr. Potter's with respect to being required to sell the grain to river point elevators or lose it yourself?
A. Yes, I do some business with the rivers.
Q. Is that because you get a better price over there for the farmer than you do if you put it through your own elevator and ship to Chicago?
A. Yes, sir.
Q. Has the Alton also given you a state rate less than the interstate rates on your corn to Chicago?
A. Yes, sir.
Q. Have you made use of that rate?
A. Yes, it has helped me.
[fol. 655] Q. It has helped you?
A. Yes, sir.
Q. More than you had before?
A. Well——
Q. What is the general business on this branch of the Alton Railroad? Has the general business disappeared from it?
A. Well, yes, it has; very materially. I don't think outside of the grain that they haul much any more.

Q. Are you in the building material business as well?

A. No, sir, I am not.

Q. So that if all the grain was taken off the Alton Railroad, there would be very little use that the Alton would have for it, is that right?

A. Yes, sir.

Mr. Belnap: Mr. Examiner, I want to object to any further interrogation on that line.

Mr. Brown: He knows about the line. He says he is on it there.

Mr. Belnap: I object on the ground that it isn't relevant to the issues in this case; involving entirely the transportation service not on this branch of the Alton but east of Chicago.

Mr. Brown: The purpose of the question was to show that ultimately, if the grain business leaves this branch line, the Alton will have no use for it and will probably discontinue service.

[fol. 656] Exam. Taylor: This is an I&S case; the question is pertinent. Proceed.

By Mr. Brown:

Q. Have you anything further to say, Mr. Colehower?

A. I don't believe I have.

Q. Do you agree with Mr. Culbertson and Mr. Farlow that the railroads, Eastern railroads should be supported in their effort to cancel these reshipping rates on barge grain?

A. I do, yes, sir.

Mr. Brown: Take the witness.

Exam. Taylor: Any questions? Cross examine.

Mr. Belnap: None for me.

Mr. Root: No cross examination.

Mr. Macaulay: No questions.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Brown: Mr. Ewing, please.

R. A. EWING, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Mr. Ewing, please state your name and residence.

A. R. A. Ewing, Malden.

Q. Is that a point on the CB&Q Railroad?

[fol. 657] A. On the main line of the CB&Q.

Q. About how far out from Chicago, do you remember?

A. 99 miles.

Q. Let's get that located. Is that somewhere in the vicinity of Mendota, Illinois?

A. 18 miles west of Mendota, 6 miles east of Princeton.

Q. Do you operate an elevator at Malden?

A. I am manager of the Farmers Elevator Company at Malden, Illinois.

Q. What is the capacity of that elevator?

A. 50,000 pounds. We have two houses there.

Q. How long have you been manager of those elevators?

A. 22 years.

Q. Have you, in doing business with the farmers naturally tributary to your territory, found that the grain has some of it been taken over to the river point elevators?

A. We attempted to take some over ourselves a week ago Tuesday, sold it with the understanding that they would take it right along. They took two loads that day, shut us off until Saturday; said they would take it Saturday afternoon. They took some loads so we sent two loads over. They sent it down to Dean Kink at Kankakee and he sent them up to the river elevator.

Q. What river point was that?

A. La Salle, Illinois.

Q. Who was the buyer?

[fol. 658] A. Continental Grain Company.

Q. Do you think that is treating the farmers right, to refuse service after they have bought it?

A. They can't get service for volume and we can't get trucks enough to handle the volume. There aren't trucks enough, contractors or river vessels enough to handle the grain.

Q. Do you make use of this so-called lake local rate on your line to Chicago?

A. Yes, we use a lake local to Chicago.

Q. Do you understand that the corn that you ship to Chicago on this lake local rate is entitled to the same rate east of Chicago that the barge grain now gets?

A. No, it is not.

Q. Is that harmful to you?

A. It most certainly is.

Exam. Taylor: Are you through?

Mr. Brown: Take the witness.

Exam. Taylor: Any questions by counsel? (No response.) Cross examine.

Cross-examination.

By Mr. Belnap:

Q. What is your lake local to Chicago?

A. 9½ cents.

Q. What is your interstate rate?

A. 12½.

Q. Are you sure of that or is it 12?

[fol. 659] A. 12½. That gave us a rate here last season from 12 to 12.5.

Q. Mr. Ewing, Mr. Tannehill's Exhibit No. 4 shows a 12 cent rate from Malden, 9½ cent intrastate rate.

A. I may be in error on that. I know there is a half to Peoria and I was under the impression that rate applied to Chicago.

Q. Do you make any shipments on which the interstate rate is paid all the way to Chicago?

A. Interstate is through billing, is that right?

Q. Just a rate to Chicago?

A. No, the local rate has been our favorable rate since we got it; practically everything I know of. That is, on corn. Of course, the oats and beans take the other rate.

Q. The oats and beans take the interstate rate?

A. That is my impression, most of the stuff has gone out that way.

Q. Oats and beans move on to Chicago on proportionals, do they?

A. Yes.

Q. The same as the barge rate does today?

A. That is my understanding.

Q. What you want as far as oats and beans is concerned is that the proportional not be applied to barge but to con-

tinue to apply it to rail shipments, or would your billing apply to them both alike?

A. From our treatment of the barge, you can guess what I think about the barge.

[fol. 660] Q. I am not asking about barge as a barge; I am asking about the traffic that moves.

A. Our investment is in Malden. We have been there for a long number of years and handle coal, grain, lumber and building material, and as far as a barge is concerned, it is a detriment any way that we can figure it at that distance.

Q. But as far as this proceeding and the issues in it, this is a controversy about rates?

A. Yes, sir.

Q. As far as your oats and beans are concerned, is there anything on which to base an objection on your part to treating the barge traffic the same as the rail traffic east of Chicago?

A. Oats and beans are small items; corn is a big item.

Q. As far as your oats and beans are concerned, have you any objection to having those commodities treated the same east of Chicago, from a rate standpoint, when they move in via barge and when they move it via rail?

A. No, I haven't.

Q. All right, now let's take your corn which moves on the intrastate rates. Is it correct that corn on which you ship on the 9½ cent rate is able to move on east on the proportional rates, if the inbound rate is averaged up to the interstate basis?

By Exam. Taylor:

Q. Do you understand that question?

A. No, I don't just quite grasp it.

[fol. 661] By Mr. Belnap:

Q. Do you understand about the application of the lake local versus the interstate rate and when they can be used?

A. Yes.

Q. When you ship corn on a lake local to Chicago, do you know what happens to the corn, where it goes to?

A. There is two ways, I believe. One is out over the Great Lakes system and the other is staying in Chicago.

Q. Being locally consumed?

A. Yes, that is my understanding.

Q. Do you understand there is a third alternative, that the corn can move on east by rail, and then in that event, the inbound line sets its charges up to the interstate rate?

A. Yes.

Q. You know about that, do you?

A. That is my understanding. There is a New York rate for corn from Chicago east that has been brought in that way.

Q. It can be used on the corn which you ship on the lake local, you understand that?

A. That is my understanding, but I am not a rate man.

Q. I don't want to ask you about the technical phase of it, except how they apply.

A. Yes, sir.

Q. You understand, when your corn which you ship on a lake local does move to New York on a proportional, what [fol. 662] is done as to the inbound rate?

A. My understanding is we are, on the railroads, penalized 8½ cents.

Q. You understand it is an 8½ cent penalty?

A. That is my understanding.

Q. And it is based on that understanding you come and testify in support of the carriers' proposal?

Mr. Enoch: I submit——

Mr. Belnap: I am asking the witness.

Mr. Enoch: You are confusing the witness also.

Mr. Belnap: Mr. Examiner, if Mr. Enoch didn't want to merely interrupt me but has an objection, I would like to hear it.

Mr. Enoch: I object because he is confusing the witness.

Exam. Taylor: The witness may answer if he knows.

The Witness: I am not informed, I don't know.

By Mr. Belnap:

Q. Now, I ask you, Mr. Witness, if it was on the basis of the understanding you just gave me that you come here and support the carriers in their proposal to increase the rates east of Chicago on ex-barge grain to the extent of 8½ cents? I should think you could answer that question.

Mr. Brown: He doesn't know it is 8½.

The Witness: May I have the question?

Mr. Belnap: Mr. Examiner, I am entitled to ask this witness that question.

[fol. 663] Exam. Taylor: Just a minute, now. The witness has asked the reporter to read the question.

(Question read.)

Mr. Belnap: I am objecting to Mr. Brown's interrupting.

Mr. Brown: I object, because it isn't always 8½ cents.

Mr. Belnap: But Mr. Examiner, the witness told me he had an understanding as to what would happen to his lake local traffic. I am not trying to prove whether his understanding is correct or not. I am asking him, is that on the basis of that understanding that he takes the position he stated in this case. It is certainly proper cross-examination.

Exam. Taylor: The witness may answer if he knows. Do you know, Mr. Witness?

The Witness: I don't know. The question really has got me confused.

Mr. Belnap: I don't want to confuse the witness at all, so let me state the situation as I understand it.

By Mr. Belnap:

Q. I have asked you about the lake local rate and you have told me it is restricted, as you understand it, when the grain actually goes on east, that grain is subject to a penalty of 8½ cents, that is your lake local. You are here advocating a change in the barge rate structures which will provide a penalty on that grain. I have asked you, did you take that position, did you come here because of your understanding that your shipments on the lake local rate are [fol. 664] penalized, as you have described them to be?

A. No.

Exam. Taylor: His answer is no.

By Mr. Belnap:

Q. That is not why you support the carriers?

A. No.

Mr. Belnap: Thank you.

Exam. Taylor: Any further questions of this witness? Witness excused and we will recess——

Mr. Cole: May I ask him one or two questions on redirect?

Exam. Taylor: Yes, Mr. Cole.

Redirect examination.

By Mr. Cole:

Q. Mr. Ewing, are you familiar with whether there exists east of Chicago a varying group of proportional rates, or do you think that there is only one proportional rate east of Chicago?

A. I am not familiar with the rates east of Chicago at all.

Mr. Cole: Thank you. That is all, Mr. Ewing.

Mr. Brown: I have just one question.

By Mr. Brown:

Q. Have you any financial interest in the grain after it is sold at Chicago? Have you anything further to do with it after it is sold in Chicago?

A. No.

Exam. Taylor: Anything further from this witness? (No response.) Witness excused.

(Witness excused.)

[fol. 665] Exam. Taylor: We will recess until 2 o'clock.

(At 12:30 o'clock P. M., recess taken until 2 o'clock P. M.)

[fol. 666] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Taylor: Mr. Belnap, are you ready?

Mr. Belnap: Yes, sir.

Exam. Taylor: All right. Mr. Tannehill recalled to give some information that Mr. Belnap asked.

W. T. TANNEHILL was recalled and testified further as follows:

Cross-examination (Continued).

By Mr. Cole:

Q. Mr. Tannehill, when you were giving your direct testimony, thereafter Mr. Belnap on cross-examination asked you whether any of the shipments shown on your exhibit 12 moved from origins in Illinois to a destination within Indiana. Since that question was asked you have you made an investigation on that?

A. May I correct you? Mr. Belnap's question was whether they moved from points in Illinois on the state rates to a delivery in Indiana in the Chicago switching district.

Q. That is correct.

A. I checked the freight bills on that and none of them moved to the American Maize at Roby or any other Indiana point that we could find.

By Mr. Belnap:

Q. Mr. Tannehill, if a shipment were billed from an [fol. 667] Illinois origin to a delivery in the Chicago switching district in Indiana would there be any expense bill issued on the shipment other than based on the interstate rate?

A. If it was billed from the country point direct to an Indiana point in the district?

Q. Yes.

A. It would be at the interstate rate.

Q. It would be the interstate rate, so it would never have any billing on it on the lake local basis?

A. That is correct, it would not have the Illinois state rates apply to it.

Q. That is right. Now, then, if any processor in the Indiana portion of the Chicago switching district purchased grain in car in the Chicago switching district and had it switched to his plant in Indiana, wouldn't the billing first issued on that car and registered with your inspection bureau show the interstate rate?

A. It might or it might be considered as two local moves, a local move to Chicago into a warehouse and then a local switching rate to that Indiana destination, interstate switching rate, but if it went out of that Indiana point under transit when the billing was cancelled for transit or applied to

an outbound shipment then the interstate rate would be assessed.

Q. But as to the purchase in car, of a car of grain, in car on track at Chicago, purchased and ordered switched to [fol. 668] an Indiana destination, aren't the freight rates collect- then at the termination of that move based on the interstate rate?

A. No, not necessarily, because of the nature of the movement. It might be localized at Chicago but when they finish it——

Q. I know what you told me about that.

A. All right.

Q. I am asking you about an inbound move.

A. No, it might be——

Q. Do you know what the fact is as to the way it is done?

A. It would be the local switching rate.

Q. You say it would be the local switching rate?

A. It is the local switching rate from the rails on the Illinois side to the other point.

Q. They pay two charges, one the lake local into Chicago?

A. One the local rate into Chicago.

Q. And then the switching rate?

A. And then the switching rate.

Q. Do you understand that is the way it is done?

A. And you will find I have——

Q. No, I just want to be sure about that, Mr. Tannehill.

A. Yes.

Q. And it is not the way that I describe it to you?

A. No.

Q. To charge the interstate rate at the termination of the move?

[fol. 669] A. No.

Mr. Belnap: All right.

Exam. Taylor: Any other questions?

By Mr. Belnap:

Q. Now, you understand I am talking to you about grain in car at Chicago that moved from the inspection track?

A. You talked to me about grain moving into an elevator in the——

Q. I didn't ask you about moving into an elevator, Mr. Tannehill.

A. Very well, then.

Q. I asked you about grain purchased in cars after arrival in the Chicago switching district, the grain being in a car on an inspection track.

A. Well, that would be one continuous move and it would be the interstate rate.

Q. That is what I asked you about. Then on that there would be no such thing as billing based on the interstate local, am I correct on that?

A. You are correct in that.

Mr. Belnap: That is all, thank you.

Exam. Taylor: Will that be all? Witness excused. Mr. Brown, next witness.

(Witness excused.)

Mr. Brown: Mr. Examiner, we have, I don't know, a dozen or more witnesses from the country and I suppose their stories will be pretty nearly alike. I would like to put on [fol. 670] three or four of them and shorten up the proceeding that way.

Exam. Taylor: Could you put on one witness that would be representative of the group and would the parties be willing to cut the other examination down to that extent?

Mr. Belnap: I cannot agree that any witness was representative of a group who do not disclose their position on the facts.

Mr. Brown: The trouble is they are not all situated the same distance from Illinois River points with their elevators and they are affected differently because of that and will be affected differently because of the activities of the barge buyers.

Mr. Belnap: I do hope that Mr. Brown won't put on cumulative evidence. Now, before lunch you put on two witnesses over on the same branch of railroad who had, according to their testimony, precisely the same interests in the case and testified precisely alike except that their names were different.

Mr. Brown: I think their locations were slightly different, weren't they? It doesn't make any difference.

Mr. Belnap: I mean there is no reason to have evidence of people who are separated a mile or two from each other and I hope he won't put on any cumulative evidence and try to drag the case on.

Mr. Brown: I will try to separate the evidence and put it on from different locations. I will put five or six on [fol. 671] anyway and they can tell their stories.

Exam. Taylor: All right.

Mr. Brown: Mr. Atherton.

Roy Atherton was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, please.

A. Roy Atherton.

Q. Mr. Atherton, what is your business? First, what is your residence?

A. Walnut, Illinois.

Q. Is that located on the C. B. & Q. Railroad?

A. That is on the C. B. & Q. and also Normandie, Illinois, on the Chicago & North-Western.

Q. Will you state the situation in your territory as it affects your grain business, in your own language?

A. The river territory now by barge has opened up,—has been so close to us in the last two or three or in the last very, very few months. Late this fall the new Illinois barge was opened, or, rather, the new Illinois bridge was opened over the Illinois River to Hennepin.

Mr. Belnap: Pardon me, Mr. Examiner. Did the witness identify his business connection?

The Witness: I will now. I am in the elevator business at Walnut and Normandie.

[fol. 672] By Mr. Brown:

Q. These are all elevator operators.

Mr. Belnap: They are all going to be elevator operators?

Mr. Brown: They are not going to be much longer but they are now.

The Witness: This new bridge opens up the river outlet to our territory. Before that there was no elevator anywhere near us. Late this fall there was a new elevator opened at LaSalle and now the new river bridge across the river at Hennepin opens up that river outlet to our terri-

tory. Now, they haven't taken any corn away from us up to the present time but our customers now are just beginning to hear of better bids offered next to the river and we hear it every day. A man will call up and say, "What are you paying for corn?" And we tell him. "Well, how does it come the other man bid so and so over at the river?" So it is only going to be a very short time until this corn will get away from us and go to the river, the same as it is in the Morris territory, which we have heard for some little time, but, of course, it didn't affect us but it will. We know that because that is the history of what has happened in these other communities.

Q. Is there a river buyer at Hennepin?

A. Yes, sir, the Norris Grain Company is at Hennepin and that is about 28 to 30 miles from us.

Mr. Brown: That is all.

Exam. Taylor: Any questions? Cross-examination?

[fol. 673] Mr. Belnap: No cross-examination.

Cross-examination.

By Mr. Root:

Q. You mentioned, "The same as it is from the Morris territory." What do you mean by that?

A. Well, in the Morris territory I know that the elevators there lost grain to the river. Finally they had some adjustment in freight rates which I suppose helped ease their situation.

Q. Can you specify an elevator in the Morris territory that was injured by this practice of shipping over the water?

A. I know nothing of the grain business in that territory, only I know that it moved from there and that there was some adjustment made in rates.

Q. Then you don't know whether any elevator man has been injured around Morris or not, do you?

A. I know that the rate was changed from about 11½ to 5 cents and then tapered out. We went through those same things and I think most anyone close to these river elevators went through that thing. They tapered the rates out.

Q. What has that got to do with injury? What has that got to do with injuring the elevator operator is what I am trying to get at? That is the statement you made.

A. Unless an elevator on a railroad has a rate somewhat comparable to a river rate his business is going to get away from him to some extent. Now, they handle mostly corn at the river. I don't believe a farmer can take oats [fol. 674] down there. Suppose the corn business goes — the river and that leaves me nothing but, we will say, some oats and soya bean business: I cannot operate on that. Sooner or later these elevators will have to close down which are on a branch railroad. We are on a branch railroad——

Q. That is not responsive to my question. What I would like to get at is to prove that assertion.

Mr. Enoch: I think he should let the witness finish his answer.

Exam. Taylor: Yes, Mr. Root, I wish you would stop heading off a witness when he is trying to answer you.

Mr. Root: I am sorry.

Exam. Taylor: Had you finished?

The Witness: If our business is pulled down to a point where we don't have enough revenue to operate we would have to close. In the long run then it would be a detriment to the farmer unless he has a local elevator. Now, we handle lots of small lots. A man brings in a hundred bushel of oats or a small amount of beans. We get it together in carload lots and ship it out.

By Mr. Root:

Q. Had you finished?

A. Yes.

Q. I appreciate all that. Do you know anybody in the Morris territory, any elevator that is injured? You referred to that territory.

[fol. 675] A. I know nothing of the elevators in that territory, not personally; no, I do not.

Mr. Root: That is all.

Exam. Taylor: And other cross-examination? Anything on redirect?

Mr. Brown: No.

Exam. Taylor: Witness excused.

(Witness excused.)

Mr. Belnap: Mr. Examiner, as to this series of witnesses I think perhaps Mr. Brown and the people on this side of

the table could agree that he could call a great many people who will testify to certain facts. I would not want to stipulate as to the arguments of each one but I would be perfectly glad to stipulate as to the facts fundamentally, as I understand it, where the river transportation service is operating that prices are paid that attracts grain in that direction as against moving to an elevator on the railroad which would otherwise handle the grain on the rates which are contained in the tariffs which we have before us.

Mr. Brown: And that is going on for increasing distances away from the river points?

Mr. Belnap: I haven't heard anybody say about how far the distances are but I should assume it would go just as far as the lower cost on the river would let it go.

Mr. Brown: One man said this morning he was 38 or 40 [fol. 676] miles away.

Mr. Belnap: We have an example of a man 38 or 40 miles away.

Mr. Brown: Here is a man 28 miles.

Mr. Belnap: As far as the physical fact which these witnesses will present I am perfectly willing for my part to stipulate that he could call additional witnesses who had different locations up and down this river who will say that that is the circumstance in their immediate locality. That will shorten it, I think.

Mr. Brown: Here is another man from Walnut. I just want him to indorse, if he can, Mr. Atherton's testimony. I call Mr. Howard Smith.

Mr. Belnap: I will agree that he will say the same thing, if he came from this man's town.

Mr. Brown: I am going to see if he does indorse it.

Howard Smith was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name.

A. Howard Smith.

Q. Where do you live?

A. Walnut, Illinois. I am with the Walnut Grain Company, Walnut, Illinois.

Q. Did you hear what Mr. Atherton of Walnut said?
A. I did.
[fol. 677] Q. Do you indorse what he said?
A. I do.

Mr. Brown: All right. Go on home.
Mr. Macaulay: Let me ask one question.

Cross-examination.

By Mr. Macaulay:

Q. You say when Mr. Atherton said that he would lose his business to the river, did you understand that he meant that there would be a higher price paid to your customers by someone than you could afford to pay by rail?
A. That is right because of the haul condition on your river set-up.
Q. In other words, the producer would get paid—you are afraid the producer will get more and by reason of that will go down to the river rather than come to your place?
A. In my opinion the producer in the long run will get less. I happen to be the manager of a farmers' elevator which was organized in 1907 and we happen to be located in a good district there and all we ask is that we have an equal break.
Q. At the time that you lose grain it will be because of the higher price paid the producer. What the ultimate effect will be is open to some speculation, isn't that correct?
A. The fact is that some of our producers there are being offered more than what we could bid net our track right now.
Q. That is right.
A. And we cannot stay in business with that condition existing.

[fol. 678] Mr. Macaulay: That is all. That is what I wanted to bring out.
Exam. Taylor: All right, witness excused. Next witness.

(Witness excused.)

VINCENT EGAN was sworn and testified as follows:

Direct examination.

Exam. Taylor: Give your name to the reporter.
The Witness: Vincent Egan.

By Mr. Brown:

Q. Where do you live, Mr. Egan?
A. Postoffice address Deer Grove.
Q. Where is your elevator located?
A. We have elevators on the C. & N. W. commencing at Nelson, Van Petten, Hahnaman, Langley and Buda, on the North-Western. Since they opened the Hennepin bridge over the Illinois River the barge competition has confronted us at Langley. We have run into some cases just rendered us,—we have run into some cases just recently that we were forced to pass up and let the business go to the barge due to the fact that it actually cost us money to run it through the elevator to begin to compete with the barge, and as I get it from listening to the testimony given here and the cross examiners' questioning of the witnesses, that they try to bring out the fact that——

Mr. Belnap: Now, Mr. Examiner, I object.

The Witness: You can——

[fol. 679] Exam. Taylor: Just a second.

Mr. Belnap: I object for the witness to say what is trying to be brought out. I object to that kind of testimony.

The Witness: But under the circumstances, as it now stands the Continental, as I understand it, in the Morris——

Mr. Belnap: I object, Mr. Examiner.

The Witness: Well, the barge buyers or originators of grain on the Illinois waterway in the vicinity of Morris and territory adjoining thereto are attempting to originate——

Mr. Belnap: Mr. Examiner, I object. The witness cannot speak for somebody else. He is not qualified to. He is not answering questions put to him so I have a chance to object to the question. He is volunteering sort of argumentative comments.

Exam. Taylor: I would suggest that Mr. Brown take the witness and develop the facts. Will you take the witness?

The Witness: Well, the point I want to bring out is this——

Exam. Taylor: Just a minute now, Mr. Witness. There is an objection.

Mr. Belnap: I am awfully sorry.

By Mr. Brown:

Q. Mr. Egan, I want you to tell the Examiner whether you have lost grain at your elevators that would ordinarily have come to you, whether that was because of the bidding and taking away by the barge operators? Can you do that?

A. Yes, sir, we have.

[fol. 680] Q. Well, state it in your own language, just what elevators and to what extent you think they have taken the business away from you that ought to go through your elevators?

A. Well, they will take all the corn business because they can pay more money to the farmer than we can get loaded our track for rail shipment.

Q. And deliver it at Chicago?

A. And deliver it at Chicago, due to the fact that the transit billing is not applicable to the rail shipped grain on the lake local. Then on the west of us——

Mr. Belnap: I just want to be sure. Will you read that last sentence, because I think the witness explained the rate applications which had some effect.

Mr. Brown: The witness said he didn't have transit on his billing.

A. On the lake local rate.

Mr. Belnap: And for that reason he could not pay as much, is that right?

The Witness: That is right.

Mr. Belnap: Because I want to ask him about the tariffs and their applications.

Mr. Brown: You won't get much out of him because he never saw a tariff.

The Witness: On the west of us we are confronted with the water competition at Clinton, Iowa. At that point we [fol. 681] are eliminated as either a broker or grain operator due to the fact that the competitor there has a fleet of trucks and bids the farmer direct. In one instance he bid the farmer in combining time for his beans and sent their trucks out to the farm in the field and took the beans from

the combine and hauled them into the elevator at Clinton for shipment on the barge. So in that case, if it continues, I think the elevator and the railroad are both eliminated as a market factor unless we get a rate adjustment and, therefore, I am in favor of the present ex-barge grain being denied the all transit privilege to the East.

Q. I would like to ask the witness: Do you understand that that is the only question that is now before the Commission, namely, whether or not the cancellation of the reshipping rates to the East on barge grain should be cancelled?

Mr. Macaulay: I object to that. The tariffs themselves speak as to what is before the Commission. This party's testimony,—you stated that he wouldn't know a tariff, he is not acquainted with it. He certainly is not a qualified witness to state what are the issues before the Commission at this time.

Mr. Brown: Yes. He does know this, that that is the only way that is open to him in this issue and that is the cancellation of the reshipping rates on barge grain.

Mr. Macaulay: All right, let him develop that and state how he knows it.

Mr. Brown: I asked him that and he said "Yes".

[fol. 682] Exam. Taylor: Is that all?

Mr. Brown: Yes, sir.

Exam. Taylor: Any questions? Mr. Enoch?

By Mr. Enoch:

Q. Mr. Egan, does this buyer over in Clinton territory have a river elevator in Clinton?

A. They do.

Q. Does that same operator, that same buyer have a river elevator at Morris or LaSalle or Seneca?

A. They have one at LaSalle.

Q. As I understand it, you said that over in the western part of the state this particular Buyer buys direct from the farmer and takes it to his elevator but over on the Illinois River at LaSalle he buys through the country elevator up to this time?

A. That is right.

Mr. Enoch: That is all.

Exam. Taylor: Is that all? Any further questions? Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. I want to ask you about when you have transit and when you don't have transit and all what happens under these rates. On what rate do you ship to Chicago?

A. We ship on the rate that we can get the highest bid located our track. That is up to the commission man when he puts the bid out. Whatever he can make out of his bid he has for his commission.

[fol. 683] Q. What is that rate ordinarily?

A. The Illinois proportional rate from our station is 12 cents and our lake local or intrastate rate is 10½ cents.

Q. And on which rate do you ordinarily ship?

A. Just as I stated before, whichever would net us most money located our track.

Q. I understood that but I say on which rate do you usually ship?

A. We usually ship on the lake local.

Q. What percent of your shipments move on the lake local?

A. Oh, I wouldn't want to try to say. Perhaps 75 per cent.

Q. And about 25 per cent on the interstate proportion?

A. Roughly speaking.

Q. Now, what do you understand about the lake local so far as the movement east of Chicago is concerned?

A. It is not applicable to corn originating in our territory. If it is billed on the lake local to Chicago that rate does not apply when it is shipped to points beyond.

Q. What rate does not apply?

A. The interstate rate, see, the transit rate.

Q. The proportional or reshipping rates do not apply?

A. No, the lake local rate does not apply.

Q. That is, if it moves east from Chicago they do something about the inbound billing?

A. Yes, sir.

[fol. 684] Q. They set it up a cent and a half——

A. That is right.

Q. —to the interstate basis?

A. That is right.

Q. And then the grain has the privilege of the reshipping or proportional rates?

A. That is right.

Q. And you would like to have that same thing done to the ex-barge grain, is that correct?

A. What same thing done?

Q. Set it up a cent and a half?

A. I didn't say that.

Q. Is that what you would like to have done?

A. I said I was in favor of having done what this meeting is called for to do.

Q. No, it isn't called for that.

A. I am in favor of the ex-barge grain being denied the privilege of transit rates due to the fact that we are not allowed the same privilege on an equal basis.

Q. When you say "we" you mean when shipping on the lake local?

A. That is right.

Q. Your objection, then, is to letting the ex-barge grain move east on the basis of the reshipping or proportional rates so long as the traffic which you ship on the lake local does not have the same privilege?

[fol. 685] A. That is right.

Exam. Taylor: He said something further, though, Mr. Belnap. He says, "on an equal basis."

By Mr. Belnap:

Q. What do you mean by "an equal basis"?

A. We are not in a competitive basis with the barge shipper today due to the application of that rate.

Q. That is, you have to pay 12 cents to be on a competitive basis?

A. Yes, sir.

Q. When you pay 12 cents you are on a competitive basis so far as the application of the rates is concerned, are you not?

A. No, sir. As far as the application of the rate?

Q. Yes, as far as the application of the rate east of Chicago you are treated alike then, are you not?

A. We are except that we are at a disadvantage due to the haul on the barge from the origin of the grain to Chicago.

Q. Yes, but there is a difference up to Chicago, you are charging?

A. That is right.

Q. But so far as east of Chicago, when you ship on the 12 cent rate, you have the same privileges that the ex-barge grain now has?

A. That is right.

Q. That is equality there, is it not?

A. As far as I know the same rate is applied to points [fol. 686] beyond Chicago.

Q. And equality is satisfactory to you as to that extent?

A. To points beyond Chicago.

Mr. Belnap: Yes. Thank you.

Exam. Taylor: Is that all?

Mr. Belnap: Yes.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. About what per cent of the grain around your territory is now trucked to Clinton, have you any idea?

A. Trucked to Clinton?

Q. Yes. You stated that some operator sent trucks into that area and took grain to Clinton, Iowa. Do you know about what per cent?

A. I don't know what per cent, no.

Q. Is there a substantial volume?

A. Well, the elevator that I am speaking of was just erected this fall down there and probably, of course, it takes a certain length of time for anything of that nature to become known and established.

Exam. Taylor: You are speaking of the elevator at Clinton?

The Witness: At Clinton, that is right. And, therefore, I suppose in six months from now it will be much more greater than it is now. The volume as yet is probably very small.

By Mr. Macaulay:

Q. Are you able to establish what effect the elimination of the barge reshipping rates on grain on the Illinois River [fol. 687] would have as far as the market at Clinton is concerned?

A. State that question again, please.

Q. Yes, I will state it simpler. Will the grain that will go to Clinton be affected one way or the other, in your opinion, by the elimination of reshipping rates from barge grain on the Illinois River?

A. Will it be affected by the reshipping rates?

Q. That is right.

A. You mean if they sustain this proposal they have here will it be affected?

Q. Yes, that is right. I might say for your information——

A. I don't think it will be, perhaps, at Clinton because I doubt whether the lake local rate goes as far as Clinton. It goes out to where the I.P. rate equalizes the lake local rate and then it is the same and I think the Clinton rate, when they adjusted those rates last spring, at that time we had no water competition at Clinton. Therefore, the railroads did not put in a lake local rate that far west, so at the present time it would make no difference whether the I.P. rate is the same as your lake local.

Exam. Taylor: Just for the record will you explain what "I.P." is?

The Witness: It is the Illinois proportional rate that takes the transit billing. Out of here it takes the 26 cent [fol. 688] rate to New York.

Mr. Belnap: The same as the ex barge?

The Witness: That is right.

By Mr. Macaulay:

Q. I don't understand that the elimination of reshipping rates from grain on the Illinois River will in any way be affected by grain that is brought to Clinton. Do you understand that it will?

A. The grain will be affected by the rate, this proposal here, you mean?

Q. That is right, yes.

A. No. I just said I didn't know as it would but the point was brought up here why can't the elevator sell to the barge, there is nothing that prohibits it. Well, there is. Under the present set-up the barge elevator establishes contacts with the farmers in the area down around Morris and uses the elevator man, as one witness said, as a broker. All right. In the other set-up in Clinton they go out and establish their own contacts with the farmer and it will be another situation, I suppose, that will come up later, but the point that I am trying to get at is that the grain will be affected in this Morris area and LaSalle and Hennepin because of the fact that as long as the elevator's hands are tied and if he does not sell to the barge they

will immediately contact the customers direct also and that will consequently mean the elevator will have to shut its doors, the railroad will be abandoned because what is [fol. 689] the use of having something there that you pay taxes on if there isn't any revenue coming in.

Q. But your competition would continue at Clinton irrespective of what happens at these hearings, isn't that right?

A. The barge competition will continue with us at Clinton, certainly.

Mr. Macaulay: Yes.

Exam. Taylor: Is that all?

Mr. Macaulay: That is all.

Exam. Taylor: Any other questions?

By Mr. Root:

Q. Is there anything to bar you now from making arrangements to ship your grain by water?

A. No.

Q. Are you acquainted with the situation at Morris, that is, personally acquainted with it?

A. No, I am not personally acquainted with it.

Q. Any reference that you have made, then, is hearsay?

A. Morris you said?

Q. Yes.

A. Well, I am speaking of Morris and the points tributary to Morris. It all arises on the same principle, does it not?

Q. I am just asking about Morris for illustration.

A. Well, speak of Hennepin, that is one point we have gotten in personal contact with.

Q. I just asked you one question, if you are acquainted [fol. 690] with the situation at Morris? That is what I would like to know, yes or no?

A. I am not acquainted with the situation at Morris but I am at Hennepin.

Q. I am not interested in Hennepin.

Mr. Root: That is all.

By Mr. Childe:

Q. I would like to ask one question. You say you compete with water transportation at Clinton. There isn't any movement by water from Clinton to the east, is there?

A. I don't know whether they move it east or not but it probably could be moved east. It goes down the Illinois River and it could move up the Illinois River if it was profitable to do so.

Q. Do you know where it goes from Clinton by water?

A. It probably goes south.

Q. You mean to the Gulf?

A. Probably.

Mr. Childe: That is all.

By Mr. Brown:

Q. Mr. Egan, are you on an equality up to Chicago with your 12 cent interstate rate with the barge competition?

A. No, we are not.

Mr. Brown: That is all.

Mr. Belnap: Up to Chicago?

Mr. Brown: Yes, sir.

[fol. 691] Mr. Belnap: That is where you are taking your all-rail service on the one hand and the barge service on the other?

Mr. Brown: No, I am taking his 12 cent interstate rate.

Mr. Belnap: I say I am talking about his service.

Mr. Brown: I wasn't asking him about his service. I was asking if he was on an equality of rates and he said he was not.

Mr. Belnap: Now you are asking him about some service.

Mr. Brown: I am not asking about service.

Mr. Belnap: I am, Mr. Examiner, if I may be permitted to.

Exam. Taylor: Will you state?

Mr. Brown: Are you able to tell him what the service is truck plus barge to Chicago?

Mr. Belnap: I ask my witnesses questions. I don't tell them.

Exam. Taylor: All right, state your question, Mr. Belnap.

By Mr. Belnap:

Q. I understand in answer to a question by Mr. Brown you said that as far as the freight rates paid are concerned you are not on an equality with barge competition when you use the 12 cent rate into Chicago, is that correct?

A. Up to Chicago.

Q. Up to Chicago?
A. That is right.
Q. You also get a different service, do you not, for your 12 cents than the man gets who pays the barge rate?
A. In preference to what?
[fol. 692] Q. A different kind of service. You are getting all rail service in one case and you are getting all water service in the other?

Mr. Brown: How does he know that he doesn't get the water service? Do you know?
The Witness: I have no way of knowing when you don't use the water.

By Mr. Belnap:

Q. You don't know whether it moves by barge or not?
A. No.

Mr. Brown: He says he has no way of knowing.

By Mr. Belnap:

Q. In other words, you are entirely ignorant of the fact that there is any movement of grain on this river?

Mr. Brown: He is entirely ignorant of the cost on the river, yes, sir.
The Witness: I don't think anyone does know the cost on the river.
Mr. Brown: You are, too.
Mr. Belnap: I don't think Mr. Brown ought to admit that the witness is ignorant. I don't think he is ignorant.
Mr. Brown: I didn't say he was ignorant. He is entirely ignorant of the cost.
Exam. Taylor: Is that all, Mr. Belnap?
Mr. Belnap: I would still like to find out. Mr. Brown keeps telling him something every time.
[fol. 693] Mr. Brown: Now, Mr. Belnap, suppose he gave you the answer you wanted would that affect or have anything to do with the cost on the river or would it have anything to do with the cost on the river even if he said "Yes" to your question?
Mr. Belnap: I think it is important to note that there is a difference in service. You pay one thing for one kind of a service. You pay something else for an entirely different kind of service.

Exam. Taylor: Well, isn't that elemental, again?
Mr. Belnap: I believe it is.

By Mr. Baxter:

Q. You said you were not on an equality with the barge rate?
A. That is right.
Q. If the barge rate is cancelled out would you be able to pay the farmer any more for your grain then than you do now?

Exam. Taylor: What do you mean "the barge rate is cancelled out"?
Mr. Baxter: If the ex-barge rate east of Chicago was cancelled.
Exam. Taylor: Oh. Well, you said "barge rate". I didn't get your question.
Mr. Baxter: I meant the ex-barge rate.

Q. Would you be able to pay the farmer or producer any more money than you are paying today?

Mr. Enoch: I think that question is too speculative to be [fol. 694] answered. How can this gentleman say what the price level is going to be a month from now or six months from now?
Mr. Belnap: Mr. Examiner, how can Mr. Enoch——
Mr. Enoch: How can the witness answer the question?
Mr. Belnap: Every time we ask him a question they try to suggest what to say. I think this man is intelligent and when it comes to saying "no" he can say it himself.
Mr. Enoch: The same thing is true with your people, you cut in on them right through. He cannot say what he is going to pay for wheat today or a week from today or a month from today.
Mr. Belnap: Sure he can.
Mr. Enoch: Let him tell it.
Mr. Brown: Mr. Belnap, how can he tell whether the rate by water will be reduced? He knows what his freight rate is today and what it costs him but how does he know about the other costs and whether he will be able to buy more or buy less?
Mr. Belnap: Is it appropriate, Mr. Examiner, to have counsel who do not make an objection to state something to

the witness and tell him what he does know and what he does not know before he can answer the question?

Exam. Taylor: I grant you there is something wrong about it and I think they ought to hold themselves in check.

Mr. Enoch: Mr. Examiner, I think that criticism that has been made certainly is not applicable to the last statement [fol. 695] I made the last time which was, in effect, in that I stated that the question was too speculative to be answered and in explanation I said it was impossible for this witness or any other grain buyer to tell Mr. Belnap and this Commission what he is going to pay for grain today or a week from now or a month from now.

Exam. Taylor: What was your question, Mr. Baxter?

Mr. Baxter: I am talking about present conditions. Now, he is coming in here and claiming that he is hurt by being on a disparity with river grain. I want to find out how the producers will benefit if the ex-barge rates are cancelled.

Q. How are you going to benefit your producer?

Exam. Taylor: The farmer, in other words.

By Mr. Baxter:

Q. If this barge rate is eliminated?

A. That question has been asked almost every witness that has been on here, as far as I know.

Q. I haven't heard it asked.

A. I have heard it asked. It might have been worded in different phraseology but it was asked.

Q. Can you answer it?

A. And the point is this: It looks to me like the barge line is trying to make themselves appear to the producer that they are sort of a Santa Claus. Now, how are they being Santa Claus? Aren't they getting——

Q. I am not asking that.

[fol. 696] Mr. Cole: He is answering your question.

Mr. Baxter: I want to know how are they going to benefit?

The Witness: They are going to try to put before the public or the Commerce Commission that they are paying more to the farmer originating grain on the river and that is going to be their fight to try to hold the thing as it is. Now, why are they paying it? You can't take blood from a turnip. There has got to be something there to start with

and if you haven't got a privilege over and above whereby you can bid something you can't pay more and that is what you have got. You have got a privilege there that we are not entitled to at the present time on our lake local rate on grain originating at the rail, shipped east, that you have got on the barge grain. So if you put our transit rate the same as the other I will answer your question by saying that we will be able to pay just as much as the barge, provided our rate is on an equality with the barge rate.

Mr. Baxter: That is all.

Mr. Belnap: Might I have that word "equality" explained there, Mr. Examiner? You mean the same rate up to Chicago?

Mr. Brown: All the way through.

The Witness: All the way through, the transit from orogin to destination.

By Mr. Belnap:

Q. Including the factor up to Chicago?

A. Yes.

[fol. 697] Q. If it is the same via the barge and via the rail?

A. Yes.

Mr. Brown: And all the way through, he says.

By Mr. Belnap:

Q. Yes, up to Chicago and then beyond and then everybody pays the same for transportation and one man could bid just the same as another man bids?

A. Then the barge line ceases to be Santa Claus over and above the rail shipper.

Q. Which wouldn't move any grain.

A. It has the same possibility to move grain as I would have. If you can pay the same for the grain as I can, then you can get the grain or I can get the grain. It is up to them then.

Exam. Taylor: Is there any more from this witness?

Mr. Belnap: I would like to know more about this price business.

Q. How do you fix the price that you are going to offer for grain?

A. I am going to fix the price for grain in accordance with the price that I am going to receive.

Q. Who tells you what you will receive?

A. Supply and demand.

Q. By letters?

A. By figures.

Q. How does it come to you, where do you get your information?

A. Wherever the buyer is, whatever he can pay me I will pay the farmers in accordance.

[fol. 698] Q. Oh, a buyer tells you, "I will pay you so much"?

A. Yes.

Q. And then you in turn make your price so that you have the middleman's profit?

A. Yes.

Q. Take the toll on the grain as it comes through?

A. The same as the barge.

Q. So what you can afford to pay the farmer depends entirely on what the buyer can afford to pay you?

A. That is right.

Q. And in that picture enters the cost of transportation to get it to the buyer?

A. Yes, and that is what I want to equalize.

Q. The less the transportation costs to get it to the buyer the more the farmer will get?

A. That is right.

Mr. Belnap: That is all.

Mr. Brown: That is all.

(Witness excused.)

ELMER GOLL was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name.

A. Elmer Goll.

Q. Mr. Goll, where do you reside?

[fol. 699] A. At Missal, Illinois.

Q. Please state where your elevator is located, Mr. Goll?

A. It is located at Missal, Illinois, on the New York Central Railroad.

Q. All right. Please state what your situation is in your own language.

A. Our situation is since the grain has started to move by barge we have had to reduce our cost of handling to the point where there is practically no profit in it for us as an elevator, but the farmers,—we have 40 farmer members interested in this elevator and they feel that rather than sacrifice the work and investment that they have put into this elevator, which amounts to about $30,000 and 35 years of work, they would rather that I would handle grain through this elevator at practically no profit than to let this grain move to the barge. They take the attitude that the railroads are essential to them; we give them a local service that the barges we do not feel can give to the farmer, and the railroads maintain their own right of way, pay local taxes, which is all a benefit to the farmer. We have trucked some grain to the river and we find that the benefit to the farmer figured about the cost of transporting that grain from the farm to the elevator, that was about the benefit he derived from hauling grain to the river points and if that is all the benefit they feel that they cannot afford to sacrifice the investment and service they have there to pay for that [fol. 700] little gain that they would derive by going to the river. They also feel that by the cancellation of ex-barge rates from Chicago on barge grain that we would be in position to pay the farmer more money than what we are able to pay at the present time.

Q. Mr. Goll, in short I understand your statement is that the farmer owners of your elevator would rather remain loyal to their elevator at less profits or no profits at all than to truck the grain over to the barge buyers?

A. That is right.

Mr. Brown: That is all.

Exam. Taylor: Any questions? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. How do you arrive at the price you will pay for grain?

A. Why, we take the close on the Board of Trade every day and we base our price on that plus the bids that we

receive from processors of grain at different points throughout the country.

Q. And do I understand you to say that if the proportional rates were made non-applicable on ex-barge grain that you think the closing price on the Board of Trade from that fact alone would be increased?

A. From my experience on grain that we have shipped to the Chicago market we have had several incidents where grain shipped in on the local rate would sell from a half a cent below the price paid on I. P. rates, than grain that [fol. 701] carriers the reshipping privileges.

Q. That is, a half of one cent below per bushel?

A. That is the——

Q. That is per bushel you mean?

A. That is right.

Q. That is your experience?

A. Yes, sir.

Q. What is it going to do to the Chicago Board of Trade prices, is what I am asking you, if the eastern carriers are permitted to cancell the application of the proportionals east of Chicago on ex-barge grain?

A. Will you state that question again, please?

Q. Yes, sir. I want to know from you what the effect on the Chicago Board of Trade prices, closing prices, will be if the eastern carriers are permitted to cancel the application of the proportionals on ex-barge grain? Do you think it will have any effect?

A. As far as the effect on the price on the Chicago Board of Trade, I would not be familiar with that but I would say that I believe that the buyers could pay more money to us out in the country if we had the same privileges as ex-barge grain.

Q. Are you familiar with what any of your buyers could afford to pay you dependent upon whether or not they have to pay more or less than they are now paying in order to get the grain east?

A. I believe the buyers could pay more if we had the [fol. 702] same reshipping privileges out of Chicago on rail grain as we have on barge grain.

Q. What you are saying is that if they remove the restriction from the lake local so that that rate could be used in connection with a transit shipment beyond, that you would get more money?

A. Yes, sir.

Q. And that is what you meant that under certain conditions you would be able to pay more for grain?
A. That is right.

Mr. Belnap: I misunderstood you. Thank you. I think you are right.
Exam. Taylor: Any further questions?

By Mr. Enoch:

Q. I would like to ask right there, when you say you would pay more money you mean relatively more than you are paying today?
A. Yes.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Do you have any farmers other than your 40 members from whom you buy grain?
A. We have a patronage of about 120 farmers.
Q. So that about one-third of your patrons are involved in the question as to the maintenance of the elevator?
A. Yes, that is right.
Q. Can you estimate about how many bushels are in-[fol. 703] volved in a year's time?
A. Our average is about 300,000.
Q. And you say your original investment is about $30,000?
A. Yes, sir.
Q. Would you say that that is the present value of your elevator?
A. Yes, sir.

Mr. Macaulay: That is all.
Exam. Taylor: Anything further?

By Mr. Root:

Q. How far are you from Morris? How far is your elevator located?
A. From Morris we are located about 35 miles south and west.
Q. Would you be closer to Seneca then than you would be to Morris, wouldn't you?
A. Well, yes.

Q. Is there any bar of which you are aware which would prevent you from *from* becoming a member of the Allied organization and selling or shipping through their Seneca house?

A. I would say directly no. I believe that I stated the objections to that, though, in my original statement.

Q. There isn't any bar. If you wanted to you could join it, isn't that right?

A. Yes, I could.

Mr. Root: That is all.

Mr. Brown: Is the Allied soliciting membership here?

[fol. 704] Mr. Root: Yes, we will take anybody that wants to join. Do you want to join?

Mr. Enoch: What are your terms? I would be interested in that. You have got something there, maybe.

Exam. Taylor: Anything further from this witness? Witness excused. Next witness.

Mr. Brown: These fellows like to select their own company, that is all.

(Witness excused.)

E. J. Olson was sworn and testified as follows:

Direct examination:

Exam. Taylor: Give your name to the reporter.

The Witness: E. J. Olson.

By Mr. Brown:

Q. Mr. Olson: Where do you reside?

A. At Standard, Illinois.

Q. Is that where you run an elevator?

A. Yes, sir.

Q. On what road is it located?

A. On the Chicago, Milwaukee & St. Paul.

Q. What is the nearest river point barge buyer to Standard?

A. Hennepin.

Q. How far away is that?

A. About eight miles.

Q. Please state what the situation is there in your vi-

[fol. 705] cinity and as it affects your elevator.

A. We are located in what they call the big bend of the Illinois River. The Hennepin elevator, as I stated, is eight miles west of us and an elevator at La Salle, about ten miles northeast of us. I want to say that the business—we have lost lots of business to the river in that I mean we have moved grain to the river through our elevator. I must say that the river elevators treated us very fairly and we have no complaint except in some cases, as one gentleman stated before, that the facilities are not great enough to handle the grain as fast as they should. In 1938 we sent about 110,000 bushels to the river. Our annual bushelage runs about 175 to 200 thousand. This year I think perhaps 75 per cent has gone to the river.

Exam. Taylor: You are speaking of corn now?

The Witness: In corn and beans.

Mr. Enoch: When you say "beans" you mean soya beans?

The Witness: Soya beans, yes, sir. Our point in appearing at this hearing is that we appear for the—we feel that the barge has an advantage over us, their bid being around two cents better than we can pay at the rail station and being located on a branch of the Milwaukee Railroad which is only about 12 miles long from where they leave the leased line that they run their trains over, if they lose this grain business very much longer we are afraid that they will abandon the railroad and our company has an investment there of perhaps 25 to 30 thousand [fol. 706] dollars, which would not be worth very much in case the railroad should be abandoned and we feel, our directors and stockholders feel that we must try to keep that property; naturally we don't want to lose any money on it and that is our main objection, is that we are afraid in the future we will lose this railroad and then our property, as you know, of course won't be worth very much.

Exam. Taylor: Is that all?

Mr. Brown: That is all.

Exam. Taylor: Any questions?

Mr. Bradford: I would like to ask Mr. Olson a question.

Q. Mr. Olson, you handle other commodities than grain, don't you?

A. Yes.

Q. What other commodities, building materials?

A. Building materials and coal, wire.

Q. If this branch line of railroad is abandoned could you stay in that business?
A. No, we could not.

Mr. Bradford: That is all.
Exam. Taylor: Is that all? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Do you use the tracks in handling any of that other business of yours?
A. Partially.
Q. How?
A. On some commodities.
[fol. 707] Q. To places where there is railroad service would you still use a truck?
A. On some commodities.

Mr. Belnap: Thank you.
Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. How long has your elevator been located at that point?
A. Since 1912.
Q. You say that there has been a river elevator at Hennepin,—there is a river elevator at Hennepin?
A. Yes, sir.
Q. How long has that been there, do you know?
A. Well, under the present management I think about 3 years.
Q. And before that how long?
A. Well, it has been there for longer than I can remember.
Q. I see. So that that competition was probably there at the time you erected your elevator in 1912?
A. I think perhaps so but there were no trucks at that time and it was too far to move by anything else but the rails.

Exam. Taylor: There wasn't any barge then either, was there?
The Witness: Very few.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: Yes.

Exam. Taylor: Any further questions?

Mr. Childe: May I ask the witness whether he has been [fol. 708] informed by the railroads that they are going to abandon that line if they do not get this grain business?

The Witness: No, I have not.

Mr. Childe: Thank you.

Exam. Taylor: Anything further, Mr. Brown?

Mr. Brown: No.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

R. F. GUENTHER was sworn and testified as follows:

Direct examination:

Exam. Taylor: Give your name so that the parties over on the other side of the room can hear you.

The Witness: R. F. Guenther; Cedar Point.

By Mr. Brown:

Q. Mr. Guenther, do you operate an elevator at Cedar Point?

A. We do.

Q. On what railroad is it located?

A. That is on the Chicago & Milwaukee.

Q. Is your situation somewhat the same as that described by Mr. Olson, except that you are probably a little nearer the river?

A. It is, with the exception that our territory borders the river on the north and south.

Q. Do you wish to make a statement on your own ac- [fol. 709] count or do you wish to indorse what Mr. Olson said?

A. Well, our condition is practically the same, so I will just indorse the same as Mr. Olson, his testimony.

Mr. Brown: That is all.

Exam. Taylor: Is that all? Cross examine. Witness excused; next witness.

(Witness excused.)

Mr. Brown: Mr. Noder.

MIKE NODER was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, Mr. Noder?
A. Mike Noder.
Q. Where are you located, Mr. Noder?
A. McNabb, Illinois, on the New York Central.
Q. Is your situation somewhat similar to that described by Mr. Goll who is located at Missal on the New York Central?
A. No, I am in a worse place than he is, I think. I have had to haul practically all of our grain to the river. I haven't shipped any corn on the rail for sixty days and I shipped two cars of beans by rail. The rest of it all had to go to the river.
Q. Is that because the river bid was better to the farmer than you could afford to pay by rail?
A. Yes.

Mr. Brown: That is all.
[fol. 710] Exam. Taylor: Any questions? Cross examine. Witness excused; next witness.

(Witness excused.)

Mr. Brown: This will be the last one. Mr. Pein.

N. R. PEIN was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, please.
A. N. R. Pein.
Q. Mr. Pein, where are you located?
A. At Minier, Illinois.
Q. Do you operate an elevator there?
A. Yes, sir.
Q. Please state on what railroad it is located and its location with respect to Pekin and Peoria, Illinois?
A. I am located on the Pennsylvania, the Alton and the traction. These stations are approximately 25 miles from

Pekin. We have had the most loss of grain from our Tazewell station on the Pennsylvania. This loss has gradually been getting a little greater for the last couple of years. We have been able to hold most of our grain at Minier and on the traction, it being a little farther away from Pekin, but this grain is being held mostly for the reason that we have reduced our handling charges. We are not wanting to get our people accustomed to going to the river, hoping that this condition or these rates might be equalized, as [fol. 711] we need,—we haven't hauled any grain ourselves to the river because we are going to need our railroads and if this grain all goes away, if this grain all gets away, we are located on the Pennsylvania, on a branch line, and it is running very few trains as it is.

Q. What is your nearest rail market? Is it Peoria?

A. Peoria is the nearest terminal market.

Q. Do you know what your rate is, your rail rate is to Peoria?

A. 8 cents.

Q. Do you know what your rail rate is to Chicago?

A. 12½ Illinois proportional.

Q. You have no so-called lake local rate on corn that is lower than your interstate, have you, to Chicago?

A. I don't think so.

Q. Notwithstanding this 8 cent rate, which seems to be a reasonable rate as far as I know for what the distance is to Peoria, you are still losing grain to the river at Pekin?

A. We are.

Mr. Brown: That is all I have got.

Exam. Taylor: Any questions? Cross examine.

Cross-examination.

By Mr. Macaulay:

Q. Is any grain trucked from your community other than to the river?

A. Not that I know of.

Q. Any trucked to Decatur?

[fol. 712] A. Not that I know of. We are about 60 miles from Decatur.

Mr. Macaulay: I see.

By Mr. Childe:

Q. I understand that you ship your grain by railroad at the present time?

A. We do.

Q. Where does it go principally?

A. Peoria, St. Louis, Indianapolis, Chicago.

Q. Is Chicago the principal market or do you ship mostly somewhere else?

A. That all depends where the demand is. We might ship a long time to Chicago and then again we might not ship any for a long time.

Q. Do you handle principally corn?

A. Corn and beans; corn and soya beans, oats and wheat.

Q. Do you do any shipping to the south, I mean beyond St. Louis?

A. No, we don't—well, I will take it back. We might ship some oats into the southeast.

Q. As far as the corn is concerned St. Louis would take it if it is going in that direction, as I understand you?

A. Yes, St. Louis at times gets a lots of our corn.

Mr. Childe: That is right.

Exam. Taylor: Is that all from this witness?

Mr. Macaulay: I hadn't quite finished.

Mr. Childe: Oh, I beg your pardon.

By Mr. Macaulay:

Q. When you stated that you had to reduce your handling [fol. 713] charges, the benefit of that went to the farmer in the higher price than you would otherwise pay, is that right?

A. Yes, sir.

Mr. Macaulay: I see.

Exam. Taylor: Is that all? Witness excused. Next witness.

(Witness excused.)

Mr. Brown: I think we are finished with the farmer witnesses, or at least we have had representative witnesses.

Exam. Taylor: Mr. Brown, didn't you have an exhibit you were going to put in?

Mr. Brown: Yes.

Exam. Taylor: What happened to it?

Mr. Brown: Is Mr. Benson here? We expected to get him on yesterday and he has distributed his exhibit, except I think you handed me back yours.

Exam. Taylor: Yes.

Mr. Brown: Mr. Benson, please take the stand.

Mr. Macaulay: I want to ask whether he is being put on as a witness for the Board of Trade or representing whom?

Mr. Brown: He is going to tell you that if you wait a minute.

S. H. Benson was sworn and testified as follows:

Direct examination.

[fol. 714] Mr. Brown: Mr. Benson is the assistant manager of the transportation department of the Chicago Board of Trade and is introducing an exhibit, a statistical exhibit that shows the principal receipts, I believe, of Chicago grain, of grain in Chicago and production, I believe, in Illinois for a series of years, purely a statistical exhibit.

Exam. Taylor: Give your name to the reporter.

The Witness: My name is S. H. Benson. I have been connected with the transportation department of the Chicago Board of Trade for the past 32 years and for 9 years prior thereto worked in the traffic department of railroad companies.

By Mr. Brown:

Q. Have you an exhibit you wish to introduce?

A. Yes, sir.

Q. Will you please explain the exhibit as briefly as possible?

A. I desire to present an exhibit containing statistics obtained from the records of the Chicago Board of Trade covering the receipts of grain at Chicago for a series of years via all routes and forms of transportation. Also, there is shown in this exhibit the production of corn in Illinois for a series of years. The first seven sheets of this exhibit show the receipts of all grains at Chicago via all routes for the years 1932 to 1938, inclusive. Prior to 1932 the grain received at Chicago was principally by rail, some by lake, but none by barge or truck. Beginning with 1932 grain was trucked to Chicago and beginning with 1933 grain

was first received at Chicago by barge via the Illinois [fol. 715] waterway. Sheet number 8 is a comparison of the receipts of corn at Chicago via the various routes for the years 1932 to October 31, 1939, inclusive. On this sheet is also shown the production of corn in Illinois for the years 1931 to 1938, inclusive. Except for the year 1937 the receipts of corn each year at Chicago corresponded quite closely with the production of corn the previous year in Illinois. The corn production in Illinois in 1936 was next to the lowest of any of the eight years, ranking seventh; but the total receipts for 1937 ranked fourth. This was because the receipts in 1937 included 18,720,000 bushels of corn substantially all of which was transported to Chicago via all water from South America and Africa. Deducting the corn received by lake from the total receipts, the remainder, or 48,007,000 bushels, ranked seventh and corresponded with the production of Illinois corn the previous year. The corn received at Chicago by rail, truck and barge comes principally from Illinois. As is well known to the grain trade, under normal conditions there is practically no corn shipped to Chicago by lake. The first movement of any consequence of corn to Chicago by lake was in 1935. For the years 1890 to 1934, inclusive, a period of 45 years, a total of 137,000 bushels of corn was received at Chicago by lake. In 1935 about three and a half million bushels of corn was shipped to Chicago by lake from Buffalo and Georgian Bay ports. This was mostly domestic corn grown in the United States, some of which was originally shipped [fol. 716] from Chicago and was reshipped back to Chicago from the lake ports on account of the shortage of corn in the west. Some of the corn received at Chicago by lake in 1935 was imported. The 1934 production of corn in Illinois was about 146,000,000 bushels, the lowest of all the years. In 1936 the corn receipts at Chicago via lake amounted to 767,000 bushels, shipped from Montreal and Collingwood, as shown on sheet 6 of this exhibit. In 1937 there was again a shortage of corn in the west and in the United States generally and substantially all of the eighteen and a half million bushels of corn which arrived at Chicago in 1937 by lake came from South America and South Africa. This imported corn was needed to enable our processors to continue in business. In 1937 most of the corn received at Chicago by rail and by barge was subse-

quent to August. The receipts by rail amounted to 28,652 cars, of which 19,305 cars, or 67 per cent, arrived in the last four months. The receipts by barge amounted to 2,019,000 bushels, of which 1,170,000 bushels, or 58 per cent, arrived in the last four months. The last lake vessel containing imported corn was unloaded in September. In other words, the importation of corn ceased with the coming of the new crop of domestic corn. In 1938 the movement of corn to Chicago via lake consisted of 60,000 bushels from Duluth. In 1939 there was no movement at all to Chicago of corn via lake. Sheet 9 shows the receipts of grain at Chicago via the various routes for the first ten months in 1938. Sheet 10 shows the receipts of grain at [fol. 717] Chicago via the various routes for the first ten months in 1939. Sheet 11 is a comparison of the receipts of corn at Chicago via the various routes for the first ten months in 1938 with the first ten months in 1939, there being shown the percentage via each route of the total receipts for each of those two periods. In 1939 the receipts via the Illinois waterway amounted to 14.85 per cent of the total receipts for that year, while in 1938 they were 6.96 per cent of the total receipts for that year. Likewise, the receipts by truck were greater in 1939 than in 1938, both in volume and in the ratio of percentage of the total receipts. In 1938 the amount of grain trucked in was 1.56 per cent of the total receipts; whereas, in 1939 the trucked in grain was 5.08 per cent of the total receipts. With three slight exceptions the percentage of the receipts of grain via the various railroads, or groups of railroads, compared with the total receipts was less in 1939 than in 1938. The total receipts via rail in 1939 amounted to 51.04 per cent of the total receipts for 1938, but the total receipts via all the routes in 1939 were 58.21 per cent of the total receipts for 1938. This increase in 1939 over 1938 of the total receipts is accounted for by the heavier receipts in 1939 by barge via the Illinois waterway and by truck. Sheet 12 is a statement of the grain received by barge at the various Chicago elevators for the first ten months in 1938 compared with 1939. The increase in the 1939 receipts over 1938 was [fol. 718] 3,470,640 bushels, or, as shown on sheet 13, nearly 16 per cent greater in 1939 than in 1938. The greatest increase by barge in 1939 over 1938 was corn, the increase being 1,396,526 bushels.

Exam. Taylor: Before you leave that page, are those all river elevators in the Chicago district?

The Witness: They are all located on the waterway. Sheet 13 shows the increase or decreases in 1939 as compared with 1938 for each elevator. The Chicago elevators equipped to receive grain by barge and their location is shown on sheet 13. Sheets 14 and 15 show the receipts by truck and by lake vessels, respectively, and the elevators into which the grain was unloaded, this information being similar to that given on sheets 12 and 13.

That completes my testimony. I would like to offer the exhibit in evidence.

Exam. Taylor: It will be received in evidence.

Mr. Macaulay: I object to it being received in evidence.

Exam. Taylor: On what ground?

Mr. Macaulay: On the ground that I consider it to be ultra vires for the Board of Trade to appear in these proceedings. There is no basis for it under the legislative charter that was issued to the Board of Trade, there is no basis that I can see whereby the Board of Trade can take a position in these proceedings which is contrary to what we believe and which we think we can show to be the best [fol. 719] interests of the Chicago market and contrary to the interests of the farming community of Illinois. Now, that may be a technical objection, perhaps.

Exam. Taylor: Have you any reply to make?

Mr. Macaulay: I have the charter here, I have the rules and regulations of the Board of Trade to substantiate my position.

Exam. Taylor: Have you any reply to make to that, Mr. Brown?

Mr. Brown: This is the first time that I have known that the Chicago Board of Trade or a similar organization could not take part in these proceedings and especially in an I. & S. case. We think we are proper parties here and the time to make that exception, if he is going to make it at all, was before the witness said anything.

Exam. Taylor: Your objection will be noted on the record. The exhibit will be received.

(Exhibit 19, Witness Benson, received in evidence.)

Exam. Taylor: Had you finished with the witness?

Mr. Brown: Yes.

Exam. Taylor: Any questions?

By Mr. Enoch:

Q. I would like to ask you, on page 13, where in the Chicago switching district is the Irondale elevator?

A. The Irondale elevator is located at 107th and Muskegon Streets.

Q. Maybe I can shorten it this way: Are all of these ele-
[fol. 720] vators located in South Chicago or Calumet?

Mr. Brown: Not the Santa Fe.

The Witness: No, not the Santa Fe.

By Mr. Enoch:

Q. All but the Santa Fe?

A. The Santa Fe is located at 27th and Damen.

Q. The other elevators listed are in South Chicago or Calumet?

A. Yes, sir.

Exam. Taylor: Is that all? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Does your exhibit include all the elevators in the Chicago district in which grain is stored?

A. Yes, sir.

Q. From what source do you obtain the information as to the receipts at these particular elevators shown on pages 13 and 14?

A. From the records of the Chicago Board of Trade.

Q. What is the character of those records? Where does the Board of Trade get its information as to the receipts at these elevators?

A. Well, for a great many years they have pursued the practice of getting this kind of information. I assume that the direct source would be the weighmaster's department.

Q. Does the Board of Trade regularly compile statements as to both receipts and shipments?

A. Yes, sir.

Q. And broken down in the same way that you have
[fol. 721] covered the receipts in your exhibit?

A. Yes, sir.

Q. Are those compiled by Mr. West, the statistician of the Board of Trade?

A. Yes, sir.

Mr. Belnap: Mr. Brown, would you be willing to supply for the record the same data for the same years as to the outbound shipments?

Mr. Brown: The same as pages 1 to 8?

Mr. Belnap: Yes, and to show which species of grain, how the grain moved from Chicago, out from Chicago, whether by lake or by rail or by what carrier?

Mr. Brown: Yes. It is usually shown in the annual report. That, of course, could not be furnished—I would like to submit it for a whole year because these first few sheets are for calendar years.

Mr. Belnap: I would like to have it for simply the same periods. whatever they may be, as are covered by your exhibit.

Mr. Brown: Well, will you go a little further with me and ask that we furnish also for the full year of 1939 compared with 1938 on sheets 8 to 15?

Exam. Taylor: Outbound shipments?

Mr. Brown: Oh, no.

Exam. Taylor: Outbound shipments?

Mr. Brown: No, just extending the information that is [fol. 722] here for a period of, in some cases, over ten months, ten months of this year.

Exam. Taylor: Now, Mr. Brown, as I understood Mr. Belnap's request he was only talking with respect to outbound shipments.

Mr. Brown: Yes, sir.

Exam. Taylor: Now, you want to extend this information to the end of the year, to the close of this year, is that the idea?

Mr. Brown: To complete the 1939 comparison with the previous year.

Exam. Taylor: And then to show the corresponding information as to outbound shipments in line with Mr. Belnap's request?

Mr. Brown: Yes, for all of the years 1932 to 1939, inclusive.

Exam. Taylor: Is that in line with your request?

Mr. Belnap: I did not request that latter but I have no objection to showing the full year. I think that would be desirable.

Exam. Taylor: How long will that take you, Mr. Brown?

Mr. Brown: Well, Mr. West usually does not furnish us those figures until about a week or ten days after the close of the year and then, of course, we will have to make some compilations of them to show the percentage of movement by the different forms of transportation.

[fol. 723] Mr. Belnap: Well, for the previous years—for this year up to about—you have them the same way, you have for the shipments the same way you have for receipts right now?

Mr. Brown: We would just fill that in and complete the year and make the computation just as we have on the other sheets.

Mr. Belnap: I am not talking about extending 1939. I say except for the extended period of 1939 you now have available, Mr. West does, all the information you need to make up the statement?

Mr. Brown: On the outbound shipments.

Mr. Belnap: On the outbound shipments.

Mr. Brown: Except for the remainder of this year, for 1939.

Mr. Belnap: That is right, I am not including that. I say for the rest of it you have it now.

Mr. Brown: Yes, sir.

Exam. Taylor: How long would you want then?

Mr. Brown: I would want at least ten days after I receive it. I would say maybe January 15th.

Exam. Taylor: Is that agreeable to everybody, January 15th, as to the furnishing of that information?

Mr. Belnap: Yes.

Mr. Brown: We surely won't have a brief before January 15th.

Mr. Belnap: Just so that we have it in sufficient time so that we have it for the brief.

Exam. Taylor: Yes.

[fol. 724] Mr. Brown: I will give it to you just as soon as I receive it from Mr. West.

Exam. Taylor: January 15th or sooner.

Mr. Belnap: I have no other questions.
Exam. Taylor: Any other cross-examination?

By Mr. Childe:

Q. I would like to inquire. Will you refer to page 14 of your exhibit, which purports to show grain received by trucks at various Chicago elevators?
A. Yes, sir.
Q. Does that cover the entire truck receipts of all Chicago elevators or only of those shown?

Mr. Brown: Only those weighed by our weighmaster.
Mr. Childe: Would there be truck receipts at other elevators which would not appear on this page?
Mr. Brown: There might be at other industries but not at other elevators where he does the weighing.
Mr. Childe: I would just as soon have Mr. Brown answer, I don't object to that, but I don't understand what seems to be a discrepancy in the figures on sheet 14 as compared with those on earlier sheets. For example, sheet 14 shows that from January 1 to October 31 these particular Chicago elevators received 2,634,354 bushels of corn and on page 7 it would appear that the total receipts of corn at Chicago trucked in was 2,627,000 for the entire year 1938.
Q. Can you explain that?
[fol. 725] A. In other words, there is a difference of 7,000 bushels.
Q. I beg pardon?
A. You say there is a difference of 7,000 bushels?
Q. No, more than that. One is for the period of January to October and the other is for the year, for the whole year, as I read it and there is in addition to that a discrepancy in the figures that you mentioned.
A. Well, we would have to go to the source of the information to determine just how that discrepancy occurred.

Mr. Childs: There are some discrepancies, Mr. Brown, that I won't go into in detail but when you submit your figures next January will you please state what the facts are about those discrepancies?
Mr. Brown: Well, you mean there is a discrepancy on page 14?
Mr. Childe: Yes.

Mr. Brown: Well, we will have to go after our weigh-master for that.

Mr. Childe: I don't take up any further time if you will explain that for the record, Mr. Brown.

Mr. Brown: Well, we will either explain it or correct the changes, change them. That will be the explanation.

Mr. Childe: That will be satisfactory.

Mr. Brown: We will check up on that, surely.

Exam. Taylor: Is that all you have?

[fol. 726] Mr. Childe: Yes.

Exam. Taylor: Any further cross-examination of this witness? Witness excused.

(Witness excused.)

Exam. Taylor: We will take a short recess.

(Whereupon a short recess was had.)

Exam. Taylor: All right, gentlemen, come to order, please.

Mr. Brown: I call Mr. Brennan.

JOHN E. BRENNAN was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Please state your name and residence.

A. John E. Brennan; Chicago, Illinois.

Q. In what business are you engaged and what is the name of your company?

A. I am engaged in the grain commission business and the name of my company is John E. Brennan & Co.

Q. Are you a member of the Chicago Board of Trade?

A. Yes. I have been a member for 32 years.

Q. Are you a director of the Chicago Board of Trade?

A. Yes. I am the senior director of the Chicago Board of Trade and have been a director for nine years.

Q. In addition to the board of directors are there committees composed of members charged with various duties relating to the activities of the Chicago Board of Trade, [fol. 727] are you a member of any such commitees?

A. Yes. I am a member of the executive committee, the grain committee, the clearing house committee, the membership committee and the to-arrive-grain committee and I am chairman of the last two committees.

Q. Mr. Brennan, are there other members of the Chicago Board of Trade in your line of business for whom you are also speaking?

A. Yes. I am speaking for 21 rail receivers of grain, all members of the Chicago Board of Trade, in addition, Mr. Brown, to the Board of Trade officially.

Mr. Belnap: I did not hear that last.

The Witness: In addition to the Board of Trade officially.

By Mr. Brown:

Q. Have you been empowered by these 20 or 21 members to speak on their behalf?

A. I have. I have a signed power of attorney to speak in their behalf. Would you care to have me present that?

Q. I think that we ought to present that list and see if there is any objection to it.

Exam. Taylor: Just exhibit it to counsel, if you will. Proceed, Mr. Brown.

Mr. Macaulay: Could those names be read into the record?

Mr. Brown: They will be made part of the record.

Mr. Belnap: I have been handed a document which is a power of attorney for Mr. Brennan to act in their behalf [fol. 728] at the hearing. I don't understand that you give anybody a power of attorney to testify as to facts. He knows the facts or he does not.

Mr. Brown: It gives power,—it indorses what he says; they indorse what he says. They give him the power to say that.

Mr. Belnap: I don't know whether they indorse it or not. They give him power to act.

Mr. Brown: It says here, "To act on their behalf at the hearing before the Interstate Commerce Commission in the proceeding".

Mr. Belnap: I don't understand that a witness under oath speaks to anything except the facts, Mr. Examiner.

Mr. Brown: Well, then we will have to bring these men over here and that will just take up more time. I think we

ought to withdraw Mr. Brennan so that they can be over here and hear him. There are about 21 names altogether.

Mr. Enoch: Now, if your Honor please, I haven't seen this but I have no doubt it is in the nature of a document authorizing Mr. Brennan to be here as a witness in behalf of these individuals shown here who have purported to grant him this authority. That is all it is.

Mr. Belnap: I haven't any objection to anybody appearing in the name of any certain group, who is in the same position as Mr. Brennan. The point I make is that when a [fol. 729] man comes to testify before the Commission at an Interstate Commerce hearing he comes here to give all the facts.

Mr. Brown: That is all he does. These men with whom Mr. Brennan has talked and has obtained their personal signatures, their views in the matter are the same as his.

Mr. Belnap: He doesn't have to have a power of attorney to state that.

Mr. Brown: Do you have any objection to these names going in as those whose views are the same as his?

Mr. Belnap: That take the same position as Mr. Brennan? Not at all, as far as I am concerned.

Mr. Brown: With that understanding may that list be copied into the record?

Mr. Belnap: That list may be copied into the record without any objection from me.

Exam. Taylor: Any objection from anybody else? Turn it over to the reporter.

(The document referred to is as follows, to-wit:)

"Chicago, Illinois,
November 25, 1939.

Mr. W. P. Bartel, Secretary,
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR:

The undersigned grain commission merchants of Chicago, members of the Chicago Board of Trade, hereby authorize [fol. 730] and empower John E. Brennan to act in their behalf at the hearing before the Interstate Commerce Commission in the proceeding entitled Investigation and Sus-

pension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory:

E. W. Bailey & Co., Inc., by John J. Coffman.
James E. Bennett & Co., by F. W. Miller.
John E. Brennan & Co., by John E. Brennan.
E. M. Combs & Son, by E. M. Combs, Jr.
A. C. Curry, by J. C. Curry.
Farroll Brothers, by D. S. Beach.
Eugene F. Havey, by Eugene F. Havey.
Hulburd, Warren & Chandler, by Arthur J. Pollak.
Harry S. Klein, by Harry S. Klein.
Lamson Bros. & Co., by Geo. E. Booth.
McKenna & Strasser, by Christopher Strasser.
[fol. 731] Walter G. Moorhead, by Walter G. Moorhead.
Rogers Grain Co., by F. E. Glover.
James P. Ryan, by Jas. P. Ryan.
Scarritt & Hannah, by Chas. S. Scarritt.
Schifflin & Andrews, by Eugene J. Schifflin.
Gardiner B. Van Ness, Jr., by Gardiner B. Van Ness, Jr.
M. L. Vehon & Co., by M. L. Vehon.
George A. Wegener, by Geo. A. Wegener.
John West & Co., by Benj. H. Hill.
Winthrop, Mitchell & Co., by H. C. Schaack, Partner.
Daniel F. Rice & Co., by Daniel F. Rice."

By Mr. Brown:

Q. Mr. Brennan, this proceeding is entitled, "Grain Proportionals—Ex-Barge to Official Territory." Is barge grain received at Chicago known to the trade as grain which [fol. 732] comes into Chicago by barge via the Illinois waterway as distinguished from grain that is received at Chicago by lake vessels?

A. Yes.

Q. Are you familiar with the issue in this proceeding?

A. Yes. My understanding of the matter involved in this proceeding is whether grain that is shipped to Chicago in barges via the Illinois River should be entitled to have the benefit of the reshipping rates from Chicago to points in the East.

Q. What is your position in this proceeding?

A. I appear here to tell the Interstate Commerce Commission that I support the eastern railroads in cancelling

the application of the reshipping rates from Chicago to the East on grain which is brought into Chicago and South Chicago in barges via the Illinois waterway.

Q. Does some of the corn and other grains shipped to Chicago by rail originate at the same points as the grain which has been coming into Chicago by barge?

A. Yes. Principally corn, oats and soya beans, but the corn predominates in volume, as shown in the exhibit which has already been introduced here. It is only on corn that the rates to Chicago have been reduced by the railroads serving the territory adjacent to the Illinois waterway in an effort to meet the competition of the truck plus barge transportation to Chicago. The reduced corn rates to [fol. 733] Chicago have no transit privilege and, therefore, corn shipped to Chicago at these intrastate rates is not entitled, under the existing tariffs and the transit rules, to the lower reshipping rates from Chicago to the East. These reduced corn rates from northern Illinois to Chicago are known to the grain trade as lake-locals. That is, the billing is only good for reshipment by lake or by rail at local rates or for local consumption.

Q. What are your reasons for supporting the railroads in cancelling the reshipping rates to the East on ex-barge or ex-river grain?

A. There are several reasons and I will now give them. First: I am a grain commission merchant, or what is generally known as a receiver, and my business is to act as the selling agent on the Board of Trade floor for the shippers of grain from country points whose grain is shipped in cars to Chicago by rail. The grain which is consigned to me at Chicago by rail is in competition for sale with grain brought into Chicago by barge via the Illinois waterway for a very few elevators located on the Calumet River at South Chicago. Second: There has been published by a considerable number of railroads operating in Northern Illinois reduced rates to Chicago on corn from stations in Northern Illinois and these reduced rates are called "non-transit rates." Such rates have no transit privileges and the corn shipped to Chicago at such rates is not entitled to the reshipping rates from Chicago to eastern points. [fol. 733½] However, grain arriving at Chicago or South Chicago by barge now receives the benefit of the reshipping rail rates to the East. Because of this difference in treatment in the matter of rates from Chicago to the East the

corn shipped to Chicago by rail at the non-transit rates is discounted in price by the same buyers who receive corn in barges and by other buyers. Giving the barge grain the benefit of the reshipping rates to the East and not giving the corn which comes to Chicago by rail the benefit of the same reshipping rates to the East not only discriminates against the rail corn but results in a discount in price for the rail corn. Third: The corn shipped to Chicago by rail at the non-transit rates is not deliverable in Chicago in fulfillment of futures contracts because, under a regulation of the Chicago Board of Trade, grain delivered on a futures contract must be accompanied by live transit billing entitling the grain covered by that billing to the rail reshipping rates from Chicago to the East, but the barge grain, because it has the benefit under the existing rate tariffs, of the reshipping rates from Chicago to the East, may be and is delivered in fulfillment of futures contracts. Therefore, the barge grain is unduly preferred by reason of this advantage in the freight rate to the East and the rail corn is placed at an undue disadvantage in this respect.

Mr. Belnap: Right here, you mean by that rail corn that moves on the lake local non-transit rate, that is what you are talking about?

[fol. 734] A. On the interstate rate is not deliverable, on the high rate. Fourth: All grain, including soya beans, produced at the points in Illinois remote from the Illinois waterway, or nearby Illinois points from which the barge has not as yet drawn any grain, or Iowa, Minnesota, and so forth, is being displaced to some extent by grain moving to Chicago by barge. That shuts out from the Chicago market grain by rail from many points not adjacent to the Illinois waterway. This is detrimental not only to the Chicago market as a whole but to these other grain producers whose natural market is Chicago. In my opinion, the giving of the reshipping rates from Chicago to the East on barge grain has an adverse effect on all the grain producers in the territory naturally tributary to the Chicago market.

By Mr. Brown:

Q. It is your position that the corn that moves by rail to Chicago is at a marketing disadvantage as against the

corn coming into Chicago by barge, because of the fact that the corn which arrives at Chicago by rail hasn't the same value due entirely to the rate inequality to the East as between the rail and barge corn from the same producing area in Illinois?

A. That is my position and I say that the rate inequality to the East should be removed.

Mr. Brown: Mr. Examiner, I am now going to quote from what was said in some of the protests and I am taking the liberty of quoting them because Mr. Brennan has never seen those protests and does not know what was in them [fol. 735] but I will have to state what are in these protests before he can answer the question.

Mr. Macaulay: Mr. Examiner, are those protests before this hearing in this record?

Exam. Taylor: He is informing the witness of what are in the protests so that he can properly question him on the subject, as I understand it.

Mr. Brown: Yes, that is the point.

Q. One of the protestants, a shipper by barge from Morris, Illinois, said in his request for suspension, "that it has been the practice of this protestant to pass on to the farmer whose grain is sold to the protestant substantially all of the savings resulting from the use of the Illinois waterway." Another protestant, also a shipper by barge from Morris and Seneca, stated in his request for suspension: "That as a result of taking away the reshipping rates the grain sold by this protestant in Chicago, Illinois will be sold at a price less than that which would be paid for grain carrying reshipping rates; which will result in less money being received for each bushel of grain then shipped to Chicago, Illinois over the Illinois waterway by this protestant; that in the operation of its business this protestant has and will continue to pass on to the people from whom it purchases grain any advantage in price which it may be able to receive on grain shipped to Chicago, Illinois via the Illinois waterway, and in turn the farmers adjacent to the Illinois waterway in the vicinity of Morris and Seneca, Illinois have in the past received more per bushel [fol. 736] for their grain than they would otherwise have received had the grain not been shipped over the Illinois waterway, and also more per bushel than they can expect to receive if the above changes in the tariff are permitted

to become effective." The last mentioned protestant, who has been shipping grain to Chicago by barge, claims to have been able to pay higher prices to the farmers, and to have received greater profits for his company on the grain shipped by barge to Chicago solely because of the fact that the barge grain had the advantage of the reshipping rates from Chicago. Now, Mr. Brennan, are you complaining here because the farmer who raises this grain in Northern Illinois may receive a greater price for it when it is shipped to Chicago by barge than when it is shipped to Chicago by rail, if this greater price is due to the lower cost of transportation to Chicago by barge than by rail?

A. I do not begrudge the farmer a better price when his grain is shipped to Chicago by barge than by rail if that better price is based on the cheaper cost of transportation to Chicago by barge than by rail, but I do claim that the grain that arrives at Chicago by barge should have exactly the same treatment in the matter of rail rates out of Chicago as on grain that comes into Chicago on non-transit rail rates. However, if the so-called premium price for grain which is paid by these barge shippers from Morris and Seneca is due solely to the fact that the barge grain has the benefit of the reshipping rates, then I think that [fol. 737] the farmers are not entitled to this premium price and that these barge shippers are not entitled to a greater profit than the country elevator owner who ships his grain by rail is able to obtain, but if it is possible to pay the farmers more money for grain shipped by barge to Chicago because of the cheaper costs to Chicago by barge than by rail then I certainly do not begrudge them this premium price. The reason why I am advocating the cancellation of the reshipping rates on barge grain is because they give the barge grain an unfair advantage in the matter of the rates east of Chicago over the grain which is shipped to Chicago by rail on non-transit rates.

Q. Do you know whether the country elevator operators in Northern Illinois in 1938 and in the early part of 1939 requested the railroads serving them to publish reduced rates to Chicago on corn in order to meet the competition of the barges on the Illinois waterway?

A. Yes. The Illinois railroads serving the country elevators adjacent to the Illinois waterway received such requests and they published the reduced rates last April.

But they have no control over the rates east of Chicago. They have done the only thing that it seems they can do at the present time to meet the barge competition and that is to reduce their state rates to Chicago. These reduced rail rates on corn to Chicago have been made in such a way that the corn cannot get the benefit of the reshipping rate east of Chicago that the barge grain gets. Some of [fol. 738] these corn rates to Chicago from nearby Illinois points are lower than the lowest Illinois proportional of 8½ cents per 100 pounds to Chicago applicable on eastbound traffic and it seems to be the attitude of the railroads that to make the reduced state rates on corn a part of the through rate to the East would unnecessarily cause a reduction in a lot of rates from Indiana and Illinois to the East. The eastern railroads do not apply any different rates on corn than on other grains. I am not a rate man but I know that the corn that is received in Chicago on these non-transit rates is handicapped in price because the buyers on the Chicago Board of Trade floor will not pay as good a price as for corn billed to Chicago at the interstate rates because when the grain that comes into Chicago on an intrastate rate is shipped east the buyer has to pay to the railroad the difference between the intrastate and the interstate rate. Of course, the grain that comes into Chicago on non-transit rail rates can be reshipped from Chicago by lake vessels, but the trouble is that the elevator buyer who wishes to avoid paying the railroad the difference in the intrastate and interstate rates to Chicago can ship this non-transit grain via lake and, in some cases, it is the same buyer who is taking into his elevator the grain which comes to Chicago by barge. I have already said that the corn which comes into Chicago by rail on non-transmit rates is further handicapped because that grain is not deliverable on futures contracts. Incidentally, neither is trucked grain deliverable on futures [fol. 739] contracts and in this respect the barge grain now has an advantage over the trucked grain. I am the sales agent on the Chicago Board of Trade floor for the country elevator operators and through them I have an indirect connection with the producer who sells his grain to my country elevator patrons, but notwithstanding my self-interest I do not claim that any of these producers should be barred from the privilege of shipping their grain to Chicago by barge, but I most emphatically assert that

such barge grain should not have a lower rate from Chicago to the East than grain from the same locality or grain from some locality computing with it that is shipped to Chicago by rail or by truck. I consider it is grossly unfair to charge the shipper of grain by rail to Chicago a higher rate beyond Chicago than the shipper whose grain comes into Chicago by barge. What I have had to say goes to the only point that I can see in this matter and that is the preference that is given to the barge grain in the matter of the rail rates east and I, therefore, ask the Commission not only on my own behalf but on behalf of the board of directors of the Chicago Board of Trade and on behalf of a large number of other grain merchants, members of the Chicago Board of Trade, that the Commission permit the railroads to cancel out the reshipping rates from Chicago on barge grain and in that way remove the discrimination against the grain that comes to Chicago by rail. Considering all the circumstances it would seem best to remove the existing discrimination in favor of barge [fol. 740] grain by permitting the cancellation of the reshipping rates on barge grain.

Q. Now, Mr. Brennan, are there days when the Chicago grain buyers who receive grain by barge are not buying any grain on the exchange floor?

A. Yes, I have had that experience where they refuse to buy grain from me on the exchange floor and I then took the trouble to check up at the country and found out that they were buying down on the water; keeping that open and nursing the water trade against the Board of Trade.

Q. In other words, it is your information that these same buyers were filling their needs by barge grain and therefore would not bid for grain that was offered on the floor that came in by rail?

A. Well, they claimed it was congested on account of lack of room and it was charged up against us and not against the customers.

Mr. Brown: I think that is all from Mr. Brennan on direct.

The Witness: Mr. Examiner, might I cite a couple of instances that might enlighten you as to the mechanical features as to how it works?

Exam. Taylor: If your counsel has no objections.

Mr. Brown: I have no objection.

The Witness: I will just give you some of the details from the market end. You have asked a lot of questions [fol. 741] here and some of the men did not know it. I will just cite an instance or two here to show you how this discrimination works against the shipper and against the grain receiver of rail grain. On Friday last at about ten o'clock in the morning I had an order from an elevator located down near one of these water elevators giving me an order to sell 10,000 bushels of one yellow corn at 57½ cents. He wanted a certain price his track. In canvassing the market I was bid 57½ if I would give him the billing, if he could reship the corn, but I couldn't. I had to sell it on the lake local. The best I could get was 56¾. My order was open until noon. I called the shipper at noon and I said, "I am sorry but 6¾ is the best I can do." He said, "Cancel it, Jack. I am bid that here from the water." So he sold the 10,000 to a water house that is a competitor of his. Why did he sell it to him? Because the water house could give him reshipping. I was paying 5 cents to the railroad and I couldn't give him a reshipping rate so I lost the 10,000 bushels, the commission.

Q. When you say "6¾" I suppose you meant 56¾?

A. My order called for 56¾ and he got 57½ down there.

Mr. Enoch: Was that house located down on the water front?

The Witness: Yes and he could give by buyer reshipping rates after it was brought up here, as he said, in a package. I brought it up here on the railroad and I was stymied.

Mr. Belnap: Mr. Brennan, so that we know how much [fol. 742] you have been hurt, what was your commission?

The Witness: $75; I happen to be a member. That is three-quarter cent a bushel. I would like to say, if it is in order here, I have been in the business for 42 years, I have done nothing else but a grain receiving business and I do not propose to be put — of business through a discrimination. Now, a natural event, as I said in this statement here I have no complaint about the rate from Morris to Chicago. You can float up and down the stream as much as you want but when you hit land and you take advantage of that cheap rate you have also got to take the disadvantage of the cheap rate.

By Mr. Brown:

Q. When you say "hit land" you mean when they hit Chicago?

A. Yes. They can't come up here and holler at the Eastern railroads to throw them an anchor. Mr. Examiner, I want to tell you it is becoming intolerable. In 1933 we brought in 137,000 bushels of corn by barge to Chicago. In 1938, we had the whole figures for that year, 11,822,000. This year up to the 1st of November we have had 12 million something. You will have 15,000,000 this year with the water bed just starting. It is about to work. You have got an elevator at Clinton, one at LaSalle, one at Morris. You have moved your ninety year business of the Chicago Board of Trade down to the water and they want you to keep the Board of Trade open and keep that futures market. They are permitted to sell the futures, which [fol. 743] they do. I stated in here it affects not only me from Illinois but it also affects me from Iowa. Suppose overnight they buy 200,000 bushels of corn down the river? What is the procedure? They immediately hedge that, they immediately sell the future. What effect does that have but to lower the market, so when my Iowa corn comes in and it carries non-transit billing it has got to be sold in competition with the boat stuff. Now, I also want to say that in my 42 years,—and I am no traffic man although I have been on the committee several times,—my understanding was that a reshipping rate was a courtesy or something here that was extended to a connecting line, because I have been on the Board of Trade floor offering corn and oats for some time and a man stopped me and said, "What are they paying here, Jack?" "I will go and tell you," and I said, "8½." He said, "Why do you say that the shipping rate was based on an in rate and here you are with a barge that don't recognize the railroad at all, the same category as the truck." I don't know why anybody should discriminate and say that the barge can and the truck cannot. They are in the same category. But when the question is asked I say neither one of them is entitled to it. It is local start and scratch at Chicago.

Mr. Brown: You may cross examine.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Your business, I understand, is that of a commission merchant?

[fol. 744] A. Correct.

Q. Do you deal exclusively in grain which arrives via rail?

A. Yes.

Q. It is to your personal interest to increase the movement of grain arriving by rail?

A. Yes.

Q. And to lessen that which may come into market and be transported by water?

A. The grain that comes by water is not merchandized in the market, it does not come to the market as cash grain.

Q. Speaking officially as a merchant, that is your particular interest in these proceedings, is it not?

A. Yes.

Q. If this corn from down the Illinois River Valley did not come in here by barge do you think it would come in here by rail?

A. I don't think that, no, not entirely. You won't eliminate the water, don't get that into your head.

Q. Would it all have come into Chicago either by one movement or the other?

A. Yes, this corn that we are talking about.

Q. In your judgment it doesn't make any difference insofar as the volume handled is concerned, it will all be handled one way or another?

A. Yes.

Q. And all this corn will be dealt in on the futures market [fol. 745] regardless of whether it comes in by rail or water?

A. If it comes by barge it would not be dealt in,—it would not be delivered on futures contracts.

Mr. Brown: That is, if the reshipping rates are cancelled?

The Witness: Yes. I am assuming that, of course.

By Mr. Belnap:

Q. At the present time it can, however?

A. Yes.

Q. Well, wouldn't the corn be hedged in the Chicago market whether it could be delivered on a futures contract or not?

A. Oh, it might possibly but they wouldn't have the production where it was available.

Q. Isn't it possible that somebody might do it?

A. It is possible somebody might do it.

Q. You haven't dealt in that barge grain yourself so you can't tell about that.

A. No. It will be what we call out of position corn and they do hedge in that and very dangerous at times.

Q. Do they hedge the corn that moves in on lake locals?

A. Yes, in a way, in a fashion, like they would do with the barges.

Q. What do you mean "in a fashion"?

A. It is not as general as the other because it is dangerous. They cannot deliver that lake local. They turn about and hedge it. This may be bought at a discount of a cent a bushel.

Q. Is it your chief complaint that the Western lines restrict their lake local so that it is not applied on corn [fol. 746] handled through the country elevators?

A. No, my complaint is that the barge that has never paid a cent to the rail road is not entitled to that consideration.

Q. I was trying to get what your complaint was.

A. That is my complaint.

Q. You would have that same complaint whether the rail rates into Chicago carry transit privileges or not?

A. Yes, I would. I am against the reshipping rates on barges.

Q. So the lake local situation of having no transit is just window dressing as it were?

A. No, I beg your pardon, you can't put that in my mouth. I went with the Northern Illinois shippers twice before the Illinois Commerce Commission. We thought at the time with a reduction in the local rate we might be able to meet the water, which we did in one small way. I say right now if you take Morris at 5 cents, reduce it two cents and leave it in the same position as it is with the barge reshipping rate and it wouldn't be worth a penny!

Mr. Belnap: That is all I have.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Would you identify this for me as being the rules and regulations and containing the charter of the Board of Trade?

A. Yes, I have——will I identify it for you?

Q. Yes.

[fol. 747] A. Well, that looks all right.

Mr. Day: I object to going into the rules and regulations of the Board of Trade.

Mr. Macaulay: I would like to have this marked for identification.

Exam. Taylor: Just exhibit it to counsel.

Mr. Day: I object.

Mr. Macaulay: I am not introducing it at this time but I would like to have it marked.

Exam. Taylor: How do you mean "marked"?

Mr. Macaulay: Well, I take it that I cannot introduce it with a person who is not my witness. I will be glad to introduce it if you will let me.

Mr. Enoch: We would like to get a copy of that if it is going to be an exhibit.

Exam. Taylor: Have you got enough copies to furnish?

Mr. Macaulay: Well, I got this from the Board of Trade. I don't know how many copies they might have available. This is not a private printing. It is the official rules and regulations.

Exam. Taylor: The rules of practice of the Commission provide that in introducing exhibits sufficient copies be furnished for the Commission and for counsel of record. Now, if you cannot comply with the rule, why, I don't know if I can receive it if it is objected to.

Mr. Macaulay: How many would it be necessary to have?

[fol. 748] Mr. Day: We have been distributing about 55 copies.

Exam. Taylor: Oh, 55, 60 copies.

Mr. Macaulay: Well, that would probably make it impossible for me to introduce it then because I doubt very much——

Exam. Taylor: Can't you bring out what you want by the answer?

Mr. Macaulay: Well, yes, I can at a later time, if I can have this marked for identification. Isn't that possible?

Mr. Brown: Before you rule, Mr. Examiner——

Exam. Taylor: We cannot mark it for identification because we have to put it in the record. We cannot admit that in the record because you haven't furnished copies for counsel.

Mr. Macaulay: I will make photostatic copies and be prepared tomorrow to take the steps I have referred to.

Mr. Brown: Before you go to that expense, what is the purpose?

Mr. Macaulay: I have a motion to exclude testimony that is put in here in the name of the Board of Trade. That is the purpose.

Mr. Day: Well, manifestly this is not proper cross-examination of this witness.

Mr. Brown: If you want to go to the trouble of getting all those copies out in order to do that I think you will probably have a good deal of trouble for the expense. It is all right with me, we will wait until the time he offers them.

[fol. 749] Exam. Taylor: Any other question on cross-examination, Mr. Macaulay?

Mr. Macaulay: Just one or two.

Q. Are you acquainted with Rule 602 of the Board of Trade, Mr. Brennan?

A. Just quote it and I will tell you. I can't remember them by number.

Q. "602: Judges must be disinterested—a member may not serve upon the Board, upon any committee, upon any trial or hearing where he has any financial interest in the result thereof or where he is connected with a firm or corporation having such an interest."

A. I am.

Q. Did you sit in on any board or any committee of the Board of Trade in determining whether or not the Board of Trade would be in these proceedings?

A. Did I sit on any Board?

Q. Yes.

A. Unquestionably I did.

Q. Did you vote in favor of the Board of Trade participating in these proceedings?

A. Yes, the whole Board of Trade were interested and not me alone, so we couldn't have had any meeting if we didn't put it up to them.

Q. Are there any other members of the board of directors who are similarly situated as you are as commission men, who voted on this matter of the participation?
[fol. 750] A. Yes, several of them.
Q. About how many?
A. Maybe four, five, six.
Q. How many are there altogether?
A. There are 15 directors.

Mr. Day: Just a moment, Mr. Brennan. I object to this line of questioning on the ground it is wholly immaterial and irrelevant. If some members of the Board of Trade have an objection, have a different view from the majority of the membership, they can come in here and make their position known to the Commission.

Mr. Brown: And they will. Mr. Belnap represents them.

Mr. Macaulay: I have no objection, of course, if they can show such an interest.

Mr. Day: I might say for the record the railroads are members of a lot of boards of trade and chambers of commerce but that never prevented these people from coming in and filing complaints.

Exam. Taylor: Objection sustained.

Mr. Macaulay: Exception.

Mr. Brown: Is there any rule or regulation of the Board of Trade that prevents any member from coming in and making any statement if his views are different from what the majority want to do?

The Witness: No, there is not.

Mr. Macaulay: That is all.

By Mr. Root:

Q. Mr. Brennan, are these other 21 people for whom [fol. 751] you speak in the same business as you are, that is, commission merchants on the Board of Trade?
A. Are they the same?
Q. Yes, are they all commission merchants?
A. Yes. I confined it in my campaign to just those that were actually interested in the receiving end. Now, if you will permit me I will give you another picture. At that time the buyers who buy off our members, I could see they would be handicapped in not getting any corn because this corn that comes in by barge is not offered on the floor, so I went to the Corn Products Company, one of the big-

gest buyers of corn, who are located at Argo. I said, "You are in this same position as we are. I would like to have you come to the directors and fight this thing." He said, "Jack, strange as it seems we have an engineer at Argo making a survey to see if we can get lower rates. If we can we want reshipping rates. If we can't we don't want it." So you are making that you are taking your cash grain market from the floor down to the river.

Mr. Brown: You might explain the location of Argo to the river.

Mr. Root: May I ask a question?

Mr. Brown: Sure.

By Mr. Root:

Q. Mr. Brennan, isn't it a fact that quite a little of this river grain is sold on the floor of the Board of Trade?

A. What is that question?

[fol. 752] Q. Isn't it a fact that quite a little of this river grain is sold on the floor of the Board of Trade?

A. No, I would say very little. There might be a little load here or a little load there, but very little.

Q. And, as a matter of fact, the Allied group, whom I represent, has sold considerable grain, a considerable amount of grain through Lowell Hoyt, you know that?

A. No.

Mr. Day: I object to counsel testifying in this record.

Exam. Taylor: Objection sustained.

Mr. Day: If he wants to take the stand let him do it.

Exam. Taylor: Objection sustained.

The Witness: I would like to answer that, too, if he will let me. I would like to give him a good answer for that. He just gave me a lead there, it is just nice. He said "Lowell Hoyt" and I understand Lowell Hoyt is financially interested in the Allied, so there is your combination again.

Mr. Root: And I object to that and your statement is a hundred per cent erroneous.

The Witness: Are you sure of that?

Mr. Root: Yes, positive.

The Witness: I don't think so. It is a ridiculous assertion.

Mr. Root: I don't think it is. I take exception to that.

The Witness: Just a minute. I would like to have you ask your Allen manager or your man at Mazon if Hoyt has [fol. 753] any money loaned to them in running their grain business? They know that.

Mr. Root: Well, ask him. Have him sworn right here.

The Witness: Well, Mr. Mazon isn't here.

Mr. Root: Mr. Allen is here.

The Witness: I will take his word for it, but that is the understanding in the trade.

Mr. Root: Well, I don't know what the understanding is. It is erroneous.

Q. Now, Mr. Brennan, isn't it a fact that if the reshipping privileges are removed from ex-barge grain that the price which can be paid for barge grain will be less?

A. Yes.

Q. And in turn will not the farmer in the country receive less money for his grain?

A. A particular set of farmers in a particular location.

Q. We are speaking now of those on the Illinois waterway.

A. That are using the waterway, yes, they will get less and they are entitled to less.

Q. Will anybody else get more?

A. Yes.

Q. Who?

A. Your market will probably be better for the general run of corn. My business will not be in competition with it.

Q. Now, isn't it true that the corn that is shipped to [fol. 754] Chicago by rail is sold in the Chicago market and also hedged in the futures the same as that which comes in by barge?

A. Not now under the present conditions, no. I would say that lake local is not hedged the same as the barges, not as freely at all, because there are certain restrictions. It is not deliverable.

Q. Pardon me, I didn't make myself clear, but grain is shipped in on transit billing on the I. P. rate?

A. Yes.

Mr. Root: That is all.

Mr. Childe: I would like to ask him if he understands that in the event that the reshipping rate is cancelled when it goes to the east on the ex-barge grain, will it make any

difference in the application of the lake local rates into Chicago from Illinois points.

A. Now, wait till I understand you on that. What we have got now, lake locals, will it change that?

Q. Yes.

A. No, I don't think so. They might make a change but as it is now, no.

Q. You do not assume in the answer that you just made to Mr. Root that you will get the privilege of using the reshipping rates on the grain that comes in by rail on lake locals?

A. No, No, but it will make your I. P., as the young man said, or the interstate billing corn more desirable. You [fol. 755] will probably get higher prices for that because that will be the only stuff deliverable in the pit.

Q. Is it your testimony, then, that instead of shipping grain into Chicago by rail on lake locals that it will be shipped in on the interstate or Illinois proportional rate?

A. You understand they are all shipped in on one billing. When you bill a car out you don't specify intrastate or I. P. or interstate. You just ship the car to Chicago. The commission man handles it to that basis and applies it on whatever billing is necessary.

Q. The inbound rates by rail would not be changed at all, would they?

A. No, he can't predict that. The railroads might change that in June.

Q. So far as your position here is concerned it does not assume that there will be any change in the inbound rail rate?

A. No.

Mr. Childe: That is all.

Redirecf examination.

By Mr. Brown:

Q. Mr. Brennan, when a car of grain comes into Chicago on this lake local rate the settlement with the railroad is on that local rate to Chicago?

A. Correct. They present an expense bill on the basis of the local rate.

Q. And any later adjustment in the charges——

A. Is paid or collected from the buyer of the grain.

[fol. 756] Q. —you think, then, is done with that bill after the buyer gets it?

A. Correct.

Q. Now, Mr. Brennan, a question was asked you whether if the reshipping rates are taken away from barge grain will it have any effect on the price? Now, in your opinion will it have any effect on the price adversely on barge grain that goes out by lake, as it does now?

A. No, I think it would be the same, the same as the lake local. It would put the barge the same as the lake local. They can go out by lake.

Q. And if 75 per cent of the barge grain is now going out by lake, on that 75 per cent there wouldn't be any change, —in your opinion there would be no reason for the buyers of barge grain making any difference in price if 75 or 80 per cent of the grain that comes in by barge is shipped by them out by lake?

A. No. That is right.

Q. Now, you spoke of efforts made, and you assisted in them, to get these Illinois railroads to restore this year rates that were somewhat similar to those that they had in 1937, so-called lake local rates on corn. Did you do the very best you could at that time in getting the rates reduced to where they are now?

A. Absolutely, we worked awfully hard on it. We thought we accomplished something.

Q. And the railroads, while they were willing to reduce [fol. 757] the rates on corn, they were not willing to make them interstate in their application?

A. Correct.

Mr. Childe: In that connection, did you ask the railroads to supply transit on those intrastate rates?

Mr. Brown: What the devil good would it do when the tariff says you can't do it?

Mr. Childe: I am asking the witness.

Mr. Brown: He doesn't know anything about it. He doesn't handle that.

Mr. Childe: I still would like to have the witness answer the question.

The Witness: Just a moment, I will answer it. That was left with our transportation department, of which Mr. Brown is chairman. We wanted an equalization and he will tell you whether he asked for it or not. I couldn't tell

you. I didn't go personally into that. We handled that through the transportation committee.

Mr. Brown: No, it is a matter of tariff, Mr. Childe, of long standing, that state rates do not have the benefit of transit until you hook them up with interstate rates or pay the through interstate rate from point of origin on through to destination. That is a cardinal principle in the transit tariffs at Chicago.

Mr. Childe: I won't cross examine Mr. Brown. Are you [fol. 758] going on the stand later?

Mr. Brown: Why should I?

Exam. Taylor: Mr. Macaulay, is this question brought up by something that was developed on redirect?

Mr. Macaulay: Yes, its application to this intrastate billing.

Recross examination.

By Mr. Macaulay:

Q. In connection with the billing out of Chicago on barge grain, if the reshipping rates are eliminated then there will be a lesser amount of transit billing available under Rule 1636 of the Board of Trade?

A. What is 1636, please? Just what is that?

Q. "Transit billing" is the title.

A. What does it mean What are you driving at?

Q. "For the purpose of this regulation"—it means that the elevator operators will furnish live transit billing to holders of warehouse receipts.

A. All right, I have got it, that is enough; I have got it. Now, what is your inquiry?

Q. I am asking you whether the all live transit billing will be substantially reduced,—whether the amount of live transit billing will be substantially reduced in the event reshipping rates are eliminated from barge grain?

A. No, we will substitute I. P. billing instead of barge billing, that is my contention.

[fol. 759] Q. That presumes that there will be an increase in the amount of I. P. billing.

A. Yes, the price will increase.

Q. Well, did you see that the reshipping rate will be 9½ cents from Morris instead of 5 cents?

A. Yes. The market will warrant that.

Q. When you went to the railroads to get this transit rate why was the tariff limited to June 30, 1940?

A. You understand that I only went with these country shippers who made the plea. They went to their own railroads. I never went before a railroad with them. I appeared with them before the Illinois Commerce Commission and they had an agreement between the railroads and the local people, that is why they made it June 30th.

Q. Do you understand that those rates are by their terms to terminate on June 30th?

Mr. Brown: Mr. Macaulay, you said "a transit rate." You didn't mean that, did you?

Mr. Macaulay: No.

Mr. Brown: I think you meant "non-transit".

Mr. Macaulay: Yes.

Exam. Taylor: Is that all? Is that all from this gentleman?

Mr. Cole: May I ask Mr. Macaulay whether he stands, or whether he still insists upon raising any objection as to the [fol. 760] competency of this witness after Mr. Macaulay himself on cross-examination has produced facts into the record from this witness, or whether he now withdraws it?

Mr. Macaulay: There has been no ruling in connection with my motion and for that reason I presumed that I was entitled to get the record as clear as possible pending the ruling.

Mr. Cole: Your presumption is erroneous, Mr. Macaulay.

Mr. Macaulay: I still maintain that the position of the Board of Trade as a Board of Trade is limited here and I renew my objection.

Exam. Taylor: Objection overruled.

Mr. Macaulay: Exception.

Exam. Taylor: Exception noted on the record. Is that all, Mr. Brown, from Mr. Brennan?

Mr. Brown: I believe so.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

Mr. Brown: There is another witness coming over from the Chicago Board of Trade this evening. He is not my

witness but he is not here, so others may go along. I just thought I would like to put him on when he comes.

W. V. WHEAT was sworn and testified as follows:

Direct examination.

Exam. Taylor: Give your name to the reporter.
[fol. 761] The Witness: My name is W. V. Wheat.

Q. What is your connection?
A. Traffic manager of the Peoria Board of Trade, Peoria, Illinois.
Q. Proceed, Mr. Wheat.
A. My name is W. V. Wheat. I reside in Peoria, Illinois. For the past eight years I have been traffic manager of the Peoria Board of Trade, with offices at 330 South Washington Street, Peoria, Illinois and prior to that time had about fifteen years experience in connection with commercial and railroad traffic matters. The testimony I am about to present is with the authority of the transportation committee of the Peoria Board of Trade and consideration should be given to the fact that two of the protestants in this proceeding, Continental Grain Co. and Norris Grain Co. of Chicago also are members of the Peoria Board of Trade and maintain offices in Peoria. The Peoria Board of Trade is a corporation organized under the laws of the State of Illinois, whose members are engaged in handling grain and grain products. The Peoria market comprises interests located in Peoria, Peoria Heights, East Peoria, South Bartonville and Pekin, all in an area extending about ten miles along the Illinois River. There are a number of storage elevators in these various communities with a capacity of between five and six million bushels, including one river front elevator at Peoria with a capacity of about [fol. 762] 130,000 bushels and two river elevators at Pekin with a capacity of about 400,000 bushels. All three elevators are also served by rail lines and are equipped to load barge and rail and to receive truck and rail grain and can easily be put into condition to unload barge grain. Owing to the fact that the movement of grain by barge to Peoria and Pekin has almost stopped during the past two or three years some of the unloading equipment would no doubt require repairs before unloading barge grain. I would like to make a short preliminary statement regarding our

contentions in connection with this proceeding. In April, 1935, the Farmers National Grain Corporation filed a complaint with the Commission attacking two adjustments as they applied to the application of proportional rates on ex-river grain, Docket No. 26965, hearing being held in Memphis, Tennessee during June, 1935. That complaint involved, first, proportional rates from Memphis, Tennessee to the southeast and Mississippi Valley and, second, from Peoria to Trunk Line and New England territories. It seemed to us the primary showing by the complainants was in connection with the rates from Memphis, Tennessee rather than from Peoria. It was stated at that time the change in the proportional rate application from Peoria was desired for the movement of wheat from Leavenworth, Kansas while our interest centered upon the effect of the rates from Illinois origins. At the time of the hearing in docket 26965, it was our understanding the proportional rate application in effect at Chicago would not permit the [fol. 763] use of those rates on ex-river grain, except where the inbound rates of the barge lines were on file with the Commission. However, it developed the rates were being applied contrary to our understanding. We would have been compelled to agree the Section 3 allegations in the complaint were proper so far as Peoria was concerned had we been convinced the proportional rates might be applied from Chicago where the inbound movement was under unfiled rates. Now it appears the eastern railroads have attempted to remove the cause of that complaint by restricting the proportional rates from Chicago whereby the rates from Chicago, Peoria and St. Louis are subject to the same general provisions on ex-river grain. For this reason we are compelled to intervene on behalf of the respondents. These two exhibits which I am about to introduce have been prepared by me and are correct to the best of my knowledge and belief. Exhibit number 20, which consists of two pages, is introduced to show the general method of equalizing the rates via Peoria, Chicago and Milwaukee from representative western points to representative points in Trunk Line and C. F. A. territory. We have used the proportional rates from Kansas City, Missouri, Omaha, Nebraska and Minneapolis, Minnesota because these rates represent the going rates on traffic which originates west of those points. So far as the Iowa origins are concerned, we have used what we consider representative origins, one

in southern, one in central and one in northern Iowa, and the whole purpose of this is to indicate that the inbound [fol. 764] rates in number of instances have no particular reference to the distance involved but, rather, are used for the purpose of equalization. We have the distances in or via the three different gateways indicating clearly that the primary purpose of the present system of not only proportional rates out but also proportional and local rates into Peoria, Chicago and Milwauke are for equalization purposes. I would like to give just one example. The distance from Chariton, Iowa to Peoria is 221 miles with a rate of 18 cents. The distance from Ames, Iowa, 274 miles, a rate of 18 cents. The difference in mileage is 53 miles and under ordinary conditions, if no consideration was given to equalization, there would be a difference of approximately two cents per hundred in the rates. Likewise, one more example: From Ames, Iowa to Milwaukee, Wisconsin the rate is 20 cents for a distance of 346 miles and from Clarion, Iowa a rate of 21 cents for a distance of 337 miles. Now, the reason for that is that those rates to Milwaukee and Chicago are equalized to the eastern territories and the proportional rates beyond Milwaukee, being the same as beyond Chicago to the Trunk Line and New England territory and the principal part of C. F. A. territory the inbound rates must be the same to afford this equalization. Exhibit number 21, one correction should be made on the title page. Under the index I indicate, "Receipts and shipments Chicago" and the word "Chicago" should be eliminated. Some testimony has been presented [fol. 765] and exhibits covering some of the information contained in this exhibit and I will endeavor to restrict what I have to say as much as possible. Page 1 is an outline map of the State of Illinois, which is divided by districts and counties. These districts are used by the various reporting bureaus of the Agricultural Department of the State of Illinois for the purpose of estimating production figures. The red line, that indicates the approximate location of the Illinois waterway. On pages 2 and 3 I have shown the production of corn for the period from 1929 to 1938, inclusive, and have shown separately, although they are included in the district totals, the production of corn in counties adjacent to the Illinois waterway, Morris, Illinois and south, where approximately fifty per cent or more of the territory is located within 35 miles

of the Illinois River. The 35 mile distance has been arbitrarily taken not because it represents the limit of the trucking territory to the river ports but because our investigation indicates that it does represent the territory most susceptible to truck movement to the ports. On page 5 we have shown some information that so far as I know has never been shown, and that is the estimated percentage of corn shipped out of the county where grown. We think that is a very important factor that is generally overlooked, because the production figures of the various states and counties mean little unless we can determine with some degree of accuracy how much of this corn is available for [fol. 766] for shipment via any method of transportation. We have shown below there the production figures which were previously shown on pages 2 and 3 and have applied these percentages for the years 1937 and 1938. We direct particular attention to the fact that so far as the bushels of corn shipped is concerned that the northeast and the central districts represent by far the greatest proportion of all corn actually shipped. On page 5-a we have shown the total production of corn, oats, wheat and soya beans for Illinois and United States 1929 to 1938 and also the indicated production for the year 1939. These figures indicate that approximately 14½ per cent of the United States production is within Illinois, approximately 12 per cent on the oats, 5 per cent on the wheat and 54 per cent on the soya beans. We have also shown the production for barley, rye and buckwheat for 1937 and 1938, indicating those grains are only of minor importance. On pages 6 and 7 we have shown the receipts of corn, oats, wheat and soya beans in the Chicago market for the year 1929 to 1938 and the same information for the year 1939 up to and including November 25, 1939. We just desire to direct attention to one particular movement there and that is the comparison of the amount of corn received by truck in the Chicago market for 1938 and up to and including November 25, 1939 by truck as compared to the total amount of all other grains received via the Illinois waterway. In 1938 there were 2,627,000 bushels of trucked [fol. 767] corn that arrived in Chicago and all the other grains which arrived by water totaled 1,547,000 bushels. In 1939 the total truck movement up to November 25th was 4,198,000 bushels and all other grains received via the barge line on the Illinois waterway 3,547,000 bushels.

Exam. Taylor: Before you leave that page, what does the "I.W.W." designate?

The Witness: Illinois Waterway.

Exam. Taylor: Illinois Waterway?

The Witness: Yes. The explanation is on page 7, Mr. Examiner.

Mr. Belnap: What page are you on? I am off a little bit.

The Witness: Pages 6 and 7, Mr. Belnap.

Exam. Taylor: All right, proceed.

The Witness: On pages 8 and 9 we have shown the grain handled by the Federal Barge Line for the years 1937 and 1938 between all ports which they serve, Davenport and south, on the Mississippi River. We have also shown the information as to corn which is included in the all grain totals. On page 9 we have brought those total figures so far as corn is concerned into bushels. It will be noted that so far as the Federal Barge Line is concerned the amount of grain they have handled to destinations on the Illinois River, in this case Chicago, is limited to the year 1937, in 1938 there having been no grain transported either from the Missis- [fol. 768] sippi River ports Davenport and south, or from Illinois River ports. The purpose of that is to indicate that the movement from the western part of Illinois and possibly the eastern part of Iowa is generally in a southerly direction. Now, we endeavored to ascertain with some degree of accuracy about the actual movement of grain via the private carriers on the Illinois River. The United States War Department admitted they had the information but they could not make it available, so we are unable to make any showing at all as to the actual number of bushels of grain which might have been handled from various river ports even to the south because my understanding is there was some movement by private lines to St. Louis and possibly to some other southern points.

Mr. Bradford: Mr. Wheat, you meant by "private carriers" those carriers other than the Federal Barge Line?

The Witness: Yes. I don't mean the Federal Barge Lines; a barge line carrier other than the Federal Barge Line. On page 11 I have set down the Federal Barge Line rates from ports on the Illinois and Mississippi rivers, Dubuque and south, to Peoria, Chicago and St. Louis, be-

cause those were the only rates available to us to which we could point with any authority, those rates being published by the Federal Barge Line in their all water tariff. Pages 12 and 13 we have shown the rates on grain and grain products from Kansas City to Peoria, Chicago and St. Louis. You will note we have shown the all water rates which are in the unfiled tariff and also the rates [fol. 769] which are in the filed tariff. I direct attention to one adjustment particularly and that is on page 13, the rate of 12.8 cents where deliveries are made to elevators in the Chicago River, including the north and south branch and the Calumet River. According to our understanding combination of rates over St. Louis, 4¼ cents to St. Louis and 6½ cents beyond, would properly be applied on any shipment for those deliveries. On page 14 we have shown just in a general way the adjustment of the non-transit rates from points adjacent to the Illinois River showing how close these adjustments are reaching into the Peoria territory. On pages 15 and 16 we have shown examples of these rates which have already been very well covered by other witnesses. Page 17 is an application of proportional rates carried under the general application of rates in Agent Jones' ICC 3055 in which the present proportional rates applications are carried. However, that same application has been carried over in ICC No. 3356. I have shown on the next pages, 18 to 23, the pertinent portions of the proportional rate applications applying from Chicago to Peoria and St. Louis and these have been more clearly shown possibly in Mr. Tannehill's exhibits numbers 2 and 3. However, I have shown here by underlining the important partes of these particular applications and I would like to direct attention to those and this applies only in connection with rates to Trunk Line and New England territories. Note 20 provides for the inbound rail or [fol. 770] water transportation line movement but provides that so far as the minimum rate provision is concerned that it will only apply when the through shipment is via rail. Note 50, which Mr. Tannehill did not show in his exhibit, applies at St. Louis, Missouri. We direct attention to the method in which that tariff now provides for the application of rates, proportional rates from St. Louis. In other words, the minimum rate application now in effect at St. Louis, as we read and understand the tariff, only

applies on traffic originating in the State of Mississippi and portions of Kentucky and Tennessee. I bring that out because I want to attempt to show what these varying applications are so far as the through charge is concerned. On page 20, note 25, and on page 21, note 40, the proportional rate applications merely provide for inbound rail or water transportation line and the protection of the local rate from the originating point as a minimum rate. However, when we consider note 25 applying at Peoria, which applies on grain originating in Illinois and the west bank points of the Mississippi River, we find an entirely different situation. The minimum rate provision in connection with this particular note in effect states that the minimum rate shall be the joint rate in effect via any route from the point of origin. I expect to show the effect of that particular provision in there. In other words, this note 35 does not require the protection of the local rate from Peoria as a minimum rate but, rather, the local rate [fol. 771] from the point of origin regardless of the route it moves. This note also carries a general exception which contains a full list of tariffs which I believe Mr. Tannehill has shown in his exhibit where the local rate to Peoria must be increased before applying the proportional rate out. I show that to indicate how much care is used to see that the rates from the points of origin to destination all rail are protected on an all rail shipment. On page 24 I have taken just one example indicating how the inbound proportional rates to Peoria are published and on page 25 I have taken specific origin points and using New York, New York as a destination I have shown the rate to Peoria and then the method of increasing that rate in order to protect the minimum rate provisions of note 35. Pages 26 to 39, inclusive, show a complete list of all of these stations in Illinois where it is necessary to increase the local rate by the various amounts shown in column "C" before the proportional rates may be applied from Peoria or Pekin, except so far as Pekin is concerned on page 30 it will be noted that there are a few stations where the rates differ or, rather, are lower to Pekin than they are to Peoria and the difference in the makeup in the inbound rate therefore varies from that which is shown on pages 26 to 29. We also have shown there a list of several stations on the Wabash Railway in western Illinois where the local rates

to Peoria are 12 cents but where under the minimum rate [fol. 772] provision of note 35 the outbound proportional rate must be increased by one cent in order to observe these minimum requirements, minimum rate requirements. We also have shown the West Mississippi—I beg your pardon. We have also shown the west bank Mississippi River Iowa points where it is necessary to increase the outbound proportional rate by one cent.

Exam. Taylor: All that is shown in the exhibit?

The Witness: Yes, it is shown.

Exam. Taylor: Can't you skip it?

The Witness: I will go over it very rapidly. On page 31 we have shown the rates which are on file with the Commission in tariffs filed by the Spring Lake Packet Company and the Illinois River Packet Company and have shown the same differences as by rail.

Exam. Taylor: Which Commission is that filed with?

The Witness: The Interstate Commerce Commission. I have shown the ICC numbers, Mr. Examiner. On page 32—this I do want to direct attention to, to the result of the minimum rate requirements applying at Peoria, Chicago and St. Louis and the first point I will refer to is Davenport. The rail rate from Davenport to New York, which has been used as a representative destination, is 40 cents. The inbound Federal Barge Line rate is 6½. In order to observe the minimum rate requirements of note 35 the proportional rate of 28 cents from Peoria to New York must be increased to 33½ cents while to Chicago and [fol. 773] St. Louis the published proportional rates from those points apply without any adjustment and I refer down again to Montezuma, Illinois, which is not located on any railroad and show the effect of these provisions so far as they apply to the three points mentioned. Under the minimum rate provisions of note 35 Peoria will secure the benefit of the outbound proportional rate of 28 cents on that particular business, giving them a through rate of 32¼ cents as compared with the local rate of 38 cents from Peoria to New York. In other words, via Peoria in that particular instance the combination rate may be applied without any padding of either the inbound or outbound rates and results in a lower charge than if applied via either Chicago or St. Louis.

Mr. Oliphant: Mr. Wheat, might I ask right there as to what the requirement is as to the amount of grain to be shipped in order to obtain that rate that you speak of?

A. You mean from Montezuma, Mr. Oliphant?

Q. The 32¼ cents that you referred to from Montezuma.

A. Mr. Oliphant, the inbound movement is subject to the minimum weights as shown on page 11 of my exhibit and from Montezuma the minimum weight to Peoria is 300 tons.

Mr. Oliphant: That is all.

The Witness: On page 33 I have taken the grain and grain product rates from Kansas City to New York, New York and it will be noted in the first block via Chicago that I [fol. 774] have used the 10¾ cent St. Louis combination to arrive at the lowest rate to elevators located in the Calumet district and in the north and south branches of the Illinois waterway in Chicago. The only other reference I want to make to that page is the reference to grain products, both rates prefixed by—both descriptions prefixed by the asterisk and by the number sign. In other words, the rates of 12 cents to Peoria, 14 to Chicago and 10 to St. Louis are obviously published in the Federal Barge Line I. C. C. No. 148 to reflect an equalization of rates from Kansas City to Trunk Line and New England territories, in the inbound proportional rates from Kansas City to Peoria, Chicago,—or, rather, because the inbound proportional rates from Kansas City to Peoria, Chicago and St. Louis vary to the same amount as the outbound rates. As I understand, a rate of 13¾ cents may be applied from Kansas City to Chicago where the shipper at Kansas City pays the loading charge of 55 cents a ton and using the proportional rate of 26½ cents beyond Chicago gives a through charge of 40¼ cents, so the rate which is on file with the Commission in Federal Barge Line I. C. C. No. 148 does not actually result in equalization via the three points. Starting on page 34 we have shown the proportional rate applications from Peoria, Chicago and St. Louis to C. F. A. territory and the only thing we desire to direct attention to there is that the minimum rate requirements differ somewhat from the requirements to Trunk Line and New England in that St. Louis [fol. 775] and Chicago must also protect their local rates as a minimum through rate. In that respect there is a difference between the two applications. On page 36, note 40, of Agent Jones' I. C. C. 3300, the provision is carried

that the northwest proportional rates apply on grain which arrives at Chicago by boat lines. On page 39 we have simply set down the local rates from Chicago, Peoria and St. Louis on grain and grain products and on page 41 we have shown the minimum inbound rates which would be required into Chicago on Illinois River grain if it was to move out of Chicago on the note 40 proportional rates. The difference here is that so far as Peoria is concerned there is a grave question as to whether or not Peoria has any proportional rates on grain arriving at that point by barge line and moving to C. F. A. territory. On page 43 we have shown a comparison of the rates from Kansas City and Havana, Illinois to three representative points in C. F. A. territory and my exhibit differs slightly from Mr. Tannehill's exhibit number 9 in that I indicate as an example that at Buffalo, New York the proportional rate must be increased to protect the local rate from Chicago to Buffalo. In Mr. Tannehill's exhibit, in which he used Morris, LaSalle and I believe a number of other origins on the Illinois waterway, he did not show any requirement that the outbound proportional rate must necessarily be increased to observe the provisions of the minimum rate application as shown in note 40. That is all I have, Mr. Examiner.

[fol. 776] Exam. Taylor: Do you want to introduce these?

The Witness: I offer in evidence, Mr. Examiner, exhibits numbers 20 and 21.

—Exam. Taylor: They will be received.

(Exhibits 20 and 21, Witness Wheat, received in evidence.)

Exam. Taylor: We will reserve cross examination of Mr. Wheat until this evening. Off the record.

(Discussion outside the record.)

Exam. Taylor: All right, gentlemen. We will adjourn now, at 5:14, until 7 o'clock tonight.

(At 5:14 o'clock p. m., a recess was taken until 7:00 o'clock p. m.)

[fol. 777] Evening Session

The hearing was resumed pursuant to recess.

7:00 P. M.

Exam. Taylor: All right, gentlemen, let us come to order. Take the stand, Mr. Wheat.

W. V. WHEAT resumed the stand and testified further as follows:

Exam. Taylor: Now, is there any question by counsel for respondents? Any question by counsel for parties in favor of the proposed schedules?

Mr. Bradford: I haven't any.

Exam. Taylor: Cross examine.

Mr. Oliphant: I have just a few questions, Mr. Examiner.

Cross-examination.

By Mr. Oliphant:

Q. Mr. Wheat, on your exhibit number 20, for what reason did you not show any Illinois points?

A. Well, as a general proposition, Mr. Oliphant, the situation in Illinois is entirely different than the situation here in that from Illinois to Trunk Line territory and the western termini we have joint rates, which does not hold true on the origins I have used in the exhibit. The exhibit simply sets down cases of where the rates are equalized on combinations where there are no joint rates from point of origin to final destination. Now, to C. F. A. territory it was [fol. 778] impossible to make such a showing due to the fact that some lines have joint rates to C. F. A. territory and others do not. There is no absolute equalization to all of C. F. A. territory from Illinois.

Q. In other words, you could not show an equalization from the Illinois,—from all of the Illinois territory like you portrayed from this other territory, is that correct?

A. That is correct; as I say, due to the fact there are so many joint rates, particularly to Trunk Line and western termini.

Q. Now, on your exhibit 21, on pages 8 and 9, what was the purpose of showing the tonnages involved to river crossings south of St. Louis?

A. The purpose of that was to show that the movement from the Mississippi River ports,—as far as the Federal Barge Line itself was concerned; I believe I made the statement that it was impossible to get the movement of grain via other barge lines,—to show at least so far as the Federal Barge Line was concerned where they handled the grain from and where they handled it to. It was the only record that it was possible to get.

Q. In other words, Mr. Wheat, what I am trying to determine is whether the tonnages shown to New Madrid, Memphis, Vicksburg, New Orleans, Greenville and Kansas City would be involved in any way in this proceeding?

A. Not at all, Mr. Oliphant. I wanted to indicate the direction of the move and why the movement from Iowa [fol. 779] via the river was not so important as it was from Illinois.

Q. On page 10 you illustrate a drawing and show a number of elevators located on the river bank and with particular reference to the upper Mississippi River show elevators under construction. Are any of the rates from these upper Mississippi River crossings involved in this proceeding?

A. I understand the proportional rate application applies to the grain originating at the upper Mississippi River crossings as well as Illinois origins.

Q. But these proportional rates against which the restriction runs apply from the river crossings St. Louis, Peoria and Chicago, do they not?

A. On grain originating at these particular points.

Q. They would have no application from these upper Mississippi River points as proportional rates?

A. Not at all. The purpose of this is to indicate where the grain will originate on the Mississippi and Illinois rivers.

Q. On page 11 of your exhibit you show some Federal Barge Line rates. Do these rates represent all of the charges that the shipper would be required to pay when he uses these rates?

A. Mr. Oliphant, all I attempted to do, as I stated I believe, was to set down the only rates which we were able to find in any publication of any barge line. I made no attempt at all to treat the handling of the grain after it reached the port or before it reached the port. In fact, [fol. 780] the records, as I have indicated, show that so far

as the movement to Peoria, and Chicago is concerned that the Federal Barge Line has handled very little grain and that was during 1937 to Chicago; that during 1938 they never handled any grain under these rates so far as the records would show.

Q. Mr. Wheat, I am particularly concerned as to the statement of the rates on this page.

A. Yes, sir.

Q. I want to know whether those rates represent what the shipper would have to pay, whether those rates include the elevation into the barge and the discharge from the barge?

A. Mr. Oliphant, I never testified as to the physical handling of grain. I only set down rates which are shown in your tariff.

Q. Well, how do those rates apply?

A. They apply to any,—they apply to in barge at origin and on barge at destination, the same as carload rates apply only in car at origin and on car at destination.

Q. I believe you stated you checked these rates out of the Federal Barge Line tariff. In fact, it shows on the exhibit?

A. Yes, sir.

Q. Is there not a provision in that tariff for the provision of handling charges?

A. Oh, if the Federal Barge Line handles the shipment, yes; that is, if they load or unload.

[fol. 781] Q. From your knowledge of their performance, I believe you stated at Peoria that the elevator was not equipped but could be equipped to handle grain from barge?

A. My understanding was that the elevator would require additional repairs to unload from barge.

Q. So in that event the handling charge would be assessed by the Federal Barge Line because that would be the only method of transferring the grain, would it not?

A. The situation on the Illinois River has changed so radically within the last few years that there has been no necessity for keeping the unloading equipment in repair. Undoubtedly if the situation was such that we could handle barge grain through Peoria those repairs would be made immediately and it wouldn't be any question of the Federal Barge Line unloading the grain because it would not be handled that way.

Q. Now, where they do not perform this unloading who pays the charge for loading that traffic into the barge and discharging it from the barge?

A. The shipper pays, ordinarily, the charges for loading into the barge and the receiver the charges for unloading from the barge, the same as he pays for loading into cars and unloading from cars.

Q. But suppose you have a car of grain originating beyond Kansas City and coming into the Federal Barge Line's docks at Kansas City to be transported by barge [fol. 782] into Peoria, that grain would already have had an elevation at the interior country point, would it not?

A. I assume if it was handled through an interior country elevator, yes.

Q. So that you would have a handling charge in addition to that at the interior point, at Kansas City, to get it into the barge?

A. Mr. Oliphant, you are going again into the physical handling of this grain at Kansas City and if you know anything about the physical handling of grain at Kansas City you know that practically a hundred per cent of the grain that goes to Kansas City is unloaded into elevators.

Q. That still has to be put into the barge, Mr. Wheat, at Kansas City, regardless of whether it comes through an elevator or some hopper arrangement?

A. That is correct and the same thing happens if it comes in by car and is transferred to the elevator. Somebody must pay the charge.

Q. That car of freight at the interior point would not come through Kansas City and go through another elevator to get to Peoria?

A. I assume, Mr. Oliphant, that what you are attempting to develop is this, that on a car of grain moving from some interior elevator west of Kansas City direct to Peoria, where the merchant at Kansas City has no control over the grain, if that is your question I assume that [fol. 783] under those conditions there would be a loading charge at Kansas City to get the shipment in the barge.

Q. At any rate, the rates shown on page 11 of your exhibit do not cover incidental charges necessary to put the freight into the barge or discharge it from the barge?

A. Mr. Oliphant, I again state that all I have shown or done was set down the rates. I made no attempt to cover the physical handling of the tra-n, the transfor from the

barge to the elevator or to the car, or the loading. I say this, that if the Federal Barge Line is compelled to load the grain there is a loading charge which they assess. If they are compelled to unload the grain there is an unloading charge which they also assess, in addition to these rates.

Q. Have you received a copy of the new tariff of the Barge Lines scheduled to become effective on December 22nd?

A. I received that Monday.

Q. 12-B?

A. Yes, sir.

Q. On page 11 of your exhibit the rates from St. Louis to Peoria as well as from Montezuma, Havana, Lacon, Peru and Morris have been eliminated from that tariff, have they not?

A. I didn't have an opportunity to check it, Mr. Oliphant, because it came in too late.

Q. Will you turn to page 12 of your exhibit and tell me whether the 6½ cent rate from Peoria shown on there [fol. 784] to—rather, strike that,—from Kansas City to Peoria includes the loading into and transferring from the barge?

A. Mr. Oliphant, the explanation under the conditions says, "In barge at origin and at destination."

Q. In other words, it does not?

A. It does not.

Q. On page 32 of your exhibit you show a through rate by rail of 38 cents from Lacon, Illinois to New York?

A. Rail rate, yes, sir.

Q. There is also a reference mark indicating that the published proportional rail rate is 28 cents from Peoria to New York, is that correct?

A. Are you talking about the asterisk reference?

Q. Yes, that 28 cent rate which you refer to from Peoria to New York, is it not?

A. That is the published rate and the rate shown is the increased rate to observe the minimum rate rule.

Q. Now, what is your local interstate rate, or your local interstate rate from Lacon, Illinois to Peoria, Illinois?

A. Mr. Oliphant, I will have to tell you that from memory. As I remember it is 10 cents by rail.

Q. 10 cents. On a rail movement, then, that would make the balance the proportional rate, wouldn't it?

A. That is correct.

Q. Do I understand from that, then, that on grain which [fol. 785] the rail carriers receive from the water line at Peoria going to New York, originating at Lacon, that they collect an amount of 5¾ cents over and above that on traffic or grain received by them at Peoria from a rail carrier?

A. That is what they would do if there could be any movement.

Q. Well, I am assuming from the rates shown on your exhibit that there would be a movement.

A. Well, it is very obvious under the example that I have shown that the rate even under low rates of 6½ cents to Chicago, which the records indicate we do not handle anyway, that there the rate would be 32½ cents and it seems very obvious to me that there could be no movement through Peoria when the rate had to be 38 through.

Q. The fact remains, however, that this exhibit indicates that the shipper of barge grain pays 5¾ cents more to the outbound rail carrier than the shipper by rail does?

A. If he could handle the grain under the rates. In other words, this simply shows why he could not handle it.

Q. In other words, you believe that 5¾ cents is a disadvantage?

A. It is a decided disadvantage. You couldn't handle it.

Q. Well, now, under that set-up the eastern rail carriers would have quite an advantage in handling barge traffic as against rail traffic?

A. If they could handle it from Peoria, yes.

Mr. Oliphant: That is all.

[fol. 786] Exam. Taylor: Any other cross-examination?

Mr. Childe: I have a few questions.

Exam. Taylor: All right, go ahead.

By Mr. Childe:

Q. I don't find anywhere in your exhibits that you show receipts of grain at Peoria. Are there any such figures in your testimony?

A. Mr. Childe, I will gladly answer the question. I attempted to ascertain from the river elevators if they would be willing to furnish me with the records of all grain received by barge and all grain forwarded by barge, to be consolidated so that there would be no opportunity to

divulge the information as to the individual shipper or receiver and they declined to give me the information, so it is impossible for me to make any showing as to the receipts of grain by barge or the forwarding of grain by barge. Therefore, there would be no reason that I can see to show the receipts and shipments by rail.

Q. I understand from your answer, then, that the Peoria Board of Trade does not keep the statistics showing the water movement into or out of Peoria?

A. We have no—on all other grain, you understand—on all barge grain, you understand, it is not subject to our jurisdiction. All barge grain is not inspected and that is where our records must come from, from the inspection department. As I say, they declined to give us the information.

Q. You do not have the figures?

[fol. 787] A. I do not have them, no, sir.

Q. Do your rail figures cover both Pekin and Peoria?

A. Absolutely.

Q. You consider that one market?

A. Everything in the market—I think I recited on my direct the different localities which we consider in the Peoria market.

Q. How many elevators at Peoria and Pekin receive grain by water?

A. For the past several years, Mr. Childe, there hasn't been any received by water so far as I could find out.

Q. Are any of them equipped to receive grain by water?

A. I also made the statement on direct, Mr. Childe, that undoubtedly there would have to be some repairs made because they had not been used for some time for unloading purposes but they can be equipped very easily. In fact, the equipment is there but undoubtedly needs repairs.

Q. Are these river elevators, then, which are located at Peoria and Pekin used only for shipping?

A. So far as I can find out the only barge grain which has been handled by those elevators in the last two years at least has been forwarded by barge and not received.

Q. I take it, then, that you do not have any private barge carriers operating on the Illinois River transporting grain to Peoria and Pekin at the present time?

A. I presume, Mr. Childe, you are referring to the Illinois [fol. 788] River Packet Company and Spring Lake Packet Company?

Q. Or any others.

A. Those are the only two that I would know anything about. So far as I could find those packet lines had not handled any grain for at least two years. I endeavored to locate some handling.

Mr. Enoch: You mean to Peoria?

The Witness: To Peoria or Pekin.

Q. You are not speaking about the movement outbound?

A. I am talking about the inbound movement.

By Mr. Childe:

Q. Why is it that the Peoria elevators are unable to attract any grain by water?

A. Mr. Childe, I attempted to show that by my exhibit, that the penalty against movement through Peoria by barge-rail is too great for anybody to overcome.

Q. Is that penalty in the outline rail rates?

A. Under certain conditions it is in the outbound rail rates, yes, sir.

Q. Well, now, looking at page 11 of exhibit 21 I do not find any penalty against Peoria there, Mr. Wheat.

A. On the inbound rate?

Q. On the inbound rate.

A. That is correct.

Q. Those rates are shown at least two cents below Chicago from the origins shown there, are they not?

[fol. 789] A. Yes, they are two cents based, of course, upon the highest Federal Barge Line rate and the highest minimum rate.

Q. And your reshipping rail rates out, disregarding for the moment any penalties, are generally two cents higher than Chicago to the east, are they not?

A. If we do not consider the minimum rate provision in the applications.

Q. Yes.

A. Now, we are talking about from these particular Illinois points shown on page 11 of the Federal Barge Line.

Q. Well, taking Dubuque, Iowa, for example, I note that you show there a rate by water of 7½ cents to Peoria, 12.8 cents to Chicago, a difference in favor of Peoria of some 5.3 cents per hundred pounds. Now, tell me about your outbound rate in case you would get a shipment from Dubuque

by water: Would the railroads charge a penalty rate from Peoria to offset that inbound advantage?

A. If you look at the first comparison on page 32, Mr. Childe, I think it will probably give you the answer.

Q. Possibly it does but I would like to have it explained on the record so I will be sure to get it.

A. Well, the 7½ cent rate into Peoria must be paid, of course, by the Peoria receiver. Then assuming that the outbound grain or the products are forwarded to a point in Trunk Line or New England territory, of which we have [fol. 790] used New York as representative, the published proportional rate, again protecting the minimum rate provision, to New York from Peoria on grain originating at Dubuque, Iowa is 28 cents, but the all rail rate from Dubuque, Iowa to New York is 41 cents and under the provisions of note 35, Agent Jones' ICC 3055, we can use no rate via Peoria which is less than the direct rail rate from Dubuque, which requires us to increase the 28 cent published proportional rate to 33½ cents, the 7½ in and the 33½ out making the 41 cent through.

Q. And that note, as I understand you, applies even if grain comes into Peoria by water?

A. If it comes in by water or by rail.

Q. Well, now, suppose that you were able to get the reshipping rates from Peoria to the east applied on the basis of two cents over Chicago on the grain that would come into Peoria by water, would that remove your objection to the present rate adjustment?

A. We would have to consider the whole adjustment, Mr. Childe, and asking me a question about one specific adjustment would not permit me to give you an answer at all.

Q. Well, I am using a specific illustration just to make myself clear. I am trying to find out, Mr. Wheat, if the rate by water into Peoria plus the rail rate out gave you just as good a total rate as the rate by water into Chicago plus the rail rate out of there to the eastern destinations, [fol. 791] would you then be satisfied?

A. I wouldn't say we would be satisfied, Mr. Childe, but I doubt if we would complain if it could be shown that the barge and rail rates via Peoria would be equalized with the barge and rail rates via Chicago. Whatever method was used to do that, of course, would have to be given some consideration.

Q. What I am trying to get at is your real objection here is a lack of equalization, or do you have some other objection to the water rates?

A. So far as I am concerned, Mr. Childe, the only objection I am making is that Peoria is penalized at the present time. Probably "penalized" is not the proper word because we just imply cannot handle any of the business and to that extent we are penalized.

Q. You are at a disadvantage and that is what you are complaining about?

A. That is our principal complaint here. Now, as to the way the railroads desire to remove that, that is something else.

Q. Do you have any inherent objection, as far as the Peoria Board and its members are concerned, to the receipt of grain by water if you could handle it without penalty?

A. Oh, if we could handle it without penalty I doubt if we would have any great objection to it.

Q. Well, do you have any?

Mr. Enoch: I would like to know what he means by han-
[fol. 792] dling grain on a penalty? Do you mean applying the proportional rate rather than the local?

Mr. Childe: I think the witness understands it.

Mr. Enoch: I think I am entitled to understand it.

Mr. Childe: If you don't understand it I suggest you take the witness stand after we are through. I object to being interrupted, Mr. Examiner.

Mr. Enoch: I want to know if the witness understands it and I ask that as a matter of courtesy that counsel explains what he means by that.

Exam. Taylor: Well, let's see if the witness does understand. Do you understand it?

The Witness: My understanding is this, that Mr. Child wants to know if we have any objection to handling inbound barge grain provided there was no penalty against Peoria? If that is Mr. Childe's question I can answer it.

Exam. Taylor: Was that your question?

Mr. Childe: I think it was. I was diverted for a moment and I am sure Mr. Wheat understands me. I will say "Yes", because I know he understands what I am talking about.

The Witness: I said I believed, Mr. Child, that we would not be here objecting if grain could be handled into Peoria

by barge and out by rail under the same basis as through Chicago, but as to how the railroads desired to effect that, that was something else.

[fol. 793] Q. You would not object if you had an advantage over Chicago, would you?

A. Well, I should say not.

Q. Now, you understand that the railroads are proposing in this case to apply on the ex-barge grain both from Peoria and from Chicago to the east the local rates. Of course you understand that, do you not?

A. I think I do, yes, sir.

Q. Now, the local rates from Peoria to the east are for the most part more than two cents above the local Chicago rates to the east, are they not?

A. Oh, yes.

Q. So so far as the locals themselves are concerned you would be at a greater disadvantage in shipping to the east compared with Chicago than you are now on a two cent difference in the reshipping rates?

A. Mr. Childe, are you assuming that we are going to handle some barge grain in and then we are only going to pay two cents more out than Chicago, or are you assuming that we are going to bring in rail grain and then pay two cents more out than Chicago? I don't quite understand the question.

Q. Yes, I am assuming that.

A. Which?

Q. Well, there is a——

Mr. Enoch: There is an unanswered question here.

Exam. Taylor: He asked you, "Which"?

[fol. 794] By Mr. Childe:

Q. I am assuming that the difference in the reshipping rates will be two cents whereas the difference in the local rates is more than two cents.

A. Mr. Childe, I wanted to know if your question is predicated on the fact that we are talking about barge grain moving out of Chicago and Peoria or if we are talking about rail grain moving out of Peoria and Chicago?

Q. We are talking about barge grain.

A. Well, we have an objection under the present adjustment if we had to pay two cents more out than Chicago

unless in all cases our barges, our barge rates in went two cents less than Chicago.

Q. At least two cents less?

A. That is right. We would not care if they were more.

Q. Well, your barge rates are at least two cents under Chicago now, aren't they?

A. The published rates are that; that is "published rates" is probably not the proper term, but the only rates which we could find are that but they move no grain to Chicago, as the records show.

Q. Well, assuming that you had those barge rates on the basis of two cents under Chicago inbound and you had the local rates outbound by rail ranging from 3 to 6 or 7 cents a hundred pounds higher than Chicago, do you feel you would be able to compete with Chicago under that adjustment?

A. Moving out under local rates?

[fol. 795] Q. Yes.

A. Well, the difference in the rates to western terminii and points east is 3½ cents.

Q. That is correct.

A. And we would never be able to do any business against Chicago unless we could buy our grain at 3½ cents a hundred pounds less than Chicago could. If we could do that then, of course, we could do business against Chicago.

Q. And looking at page 39 of your exhibit 21 I find some points there in C. F. A. territory where the local rates from Peoria is as much as seven cents a hundred pounds higher than from Chicago. Take the first point on the sheet, Lacrosse, Indiana: The local rate from Chicago 13 cents, local rate from Peoria 20 cents.

A. That is correct.

Q. You couldn't do any business, could you, at that disadvantage in outbound freight rates?

A. That is true.

Q. Wouldn't the effect, then, of the approval by the Commission of the railroads' proposal be that Peoria would not ship any grain at all by rail to the east that came in by barge?

A. We don't ship any now and we couldn't then, I assume.

Q. You couldn't do it under the proposal, could you?

A. No, sir.

Q. Well, then, what would be the effect of this proposal of the railroads if it is approved by the Commission so far [fol. 796] as Peoria is concerned? How would you benefit?

A. We would at least be put on an equality so far as shipping to the east is concerned on grain which was being diverted to the Illinois waterway and being moved into Chicago and thence out all rail.

Q. How would you be equalized? You mean by the fact that the grain would then move by rail instead of barge?

A. I wouldn't say, Mr. Childe, that the grain would move by rail, no.

Q. Well, if it didn't move by rail how would Peoria benefit by this proposal?

A. We would be at least in a more nearly competitive position so far as rates are concerned.

Q. Well, you just showed, Mr. Wheat, that you would be in a worse position because your outbound local rates are as much as seven cents a hundred pounds higher than Chicago and you said you could not use them. Now, how would you be in any better position?

A. Mr. Childe, as far as I know, and I have looked over the records of a good many firms handling grain, we have never moved any grain to Lacrosse or Buffalo or New York or any other point in this territory on local rates from Peoria and I question very much if we ever could.

Q. As a matter of fact, you know that is true of Chicago, too; they don't ship out on local rates?

[fol. 797] A. I wouldn't want to testify that is true but I presume it is. It is logical.

Q. Now, just how would Peoria be benefited if this rate proposal now before the Commission goes in?

A. We would be benefited to this extent, that Mr. Tannehill indicated the amount of barge grain received in Chicago from May 1st to November 30, 1939 and he showed the position and if my computation is correct approximately 16 per cent of the inbound barge grain went out by rail. To the extent that the receiver in Chicago was able to put that grain in his elevator and ship it to any eastern point lower than we would be able to handle grain and deliver it at the eastern points we would be out of the picture so far as shipping to that destination would be concerned.

Q. As I understand your answer the benefit you expect to get would be in the fact that some of this grain, at least, which now moves by water, would be diverted to the rail-

roads and on the all rail movement you would be in a better position to compete, is that correct?

A. Mr. Childe, I am not so hopeful that a great amount of this grain is going to be diverted from the water to the rail myself at all.

Q. Well, you were trying to tell me how you would be benefited and that was what I got out of your answer. I am just trying to see whether I understand you correctly.

A. My answer was to the effect that if the receiver of [fol. 798] barge grain, or the receivers of barge grain who forwarded 16 per cent of their barge arrivals could get that grain into Chicago and put it through their elevator cheaper than they could rail grain that we would be more nearly on an equality with it because we then also would have an opportunity to do business on an all rail adjustment, which the Chicago man would be compelled to do. Now, you asked me why the difference between that answer and why I think there will be no great diversion of grain from the barge line to the rails. Because I think the records clearly show that the lake will take out all the barge grain that has been brought in here for any number of years and probably will continue to take out that much for a number of other years. Therefore, all you do is keep from giving this barge arrived grain in Chicago what, it seems to me, to be an artificial advantage. It will go out by lake. I don't think that there will be any great lessening of the movement by barge and that is my honest opinion.

Q. And if it does move by barge to Chicago and out by lake Peoria would not get any benefit out of this adjustment, would it?

A. We will get the benefit of the adjustment to the extent that beyond 16 per cent,—that if the man owns the grain in his elevator at a lower price than he gets rail grain and he has to do business on an all rail basis, that we will be in a position to compete on the same relative basis that he is compelled to use.

[fol. 799] Mr. Childe: That is all, thank you.

Exam. Taylor: Any further cross examination of this witness?

Mr. Brown: I have one question.

Q. Mr. Wheat, I understand one of your answers was predicated on the supposition or the fact that the barge rates or costs to Peoria and Chicago would be the same

and in that event you would want a reshipping rail rate from Peoria as low as from Chicago to the east?

A. I presume that would be a natural assumption, Mr. Brown, if the barge rates were the same into Peoria as they are to Chicago, that we would have to have the same proportional rate east, that is correct.

Q. Well, if a man at Peoria put his barge billing against rail grain wouldn't he break down the equalizations between Chicago and Peoria to the east to the extent of at least two cents per hundred pounds?

A. Mr. Brown, as I see it, if I understand your question correctly, the proportional rate to apply in connection with those particular rates would have to be published and restricted to the inbound barge movement in order to bring about that effect.

Q. But would there be anything to prevent a man who had both barge billing, or barge grain and rail grain from putting his barge billing behind the rail grain and get a [fol. 800] rate from Peoria to the East the same as from Chicago, or two cents per 100 pounds less from Peoria than the rail rate?

A. That is absolutely correct, Mr. Brown, the same as now you can put barge billing behind grain that moves in under what some of them are pleased to call lake rates.

Q. But the rate east of Chicago today is the same on both; you want to get the barge grain at Peoria and then put it out at two cents per hundred pounds less than any rail grain you can put out?

A. I didn't say we wanted to, Mr. Brown. I said that was what we required if we are to be equalized.

Q. You are asking for equalization here, aren't you?

A. No, I am not asking here for equalization at all. I am not here asking for anything.

Mr. Brown: That is all.

Mr. Bradford: I have a question.

Q. Mr. Wheat, Mr. Oliphant questioned you about some grain moving from Kansas. Do you receive any appreciable amount of grain direct from Kansas country points to Peoria?

A. As far as I know, Mr. Bradford, from my years of experience in the Peoria market we have received no grain direct from any Kansas point.

Q. Do you receive some grain from terminal grain elevator operators in Kansas City by rail?

A. From time to time, yes.

Q. And under what rate does that move?

[fol. 801] A. It moves under proportional rate from Kansas City.

Q. Now, if the grain coming from Kansas City under proportional rate arrived at Kansas City from country points by car, who pays the expense of moving that grain from the car into the elevator and from the elevator back in the car?

A. Well, the receiver and the shipper pays the expense.

Q. That is the same as would occur in connection with the barge line movement from Kansas City, isn't it?

A. That is correct.

Mr. Oliphant: Do you know, Mr. Wheat, who pays that expense and whether that inbound elevation into the elevator, that charges does not carry with it the transferring out of the elevator into the car for farther movement?

Mr. Bradford: Well, I will put it this way:

Q. Is that charge included in the freight rate?

A. There is no unloading charge included in the rail freight rate,no.

Q. Now, will you refer to your exhibit number 21, on page 39: Mr. Childe asked you about a local rate from Peoria to Lacrosse, Indiana as compared with a local rate from Chicago to Lacrosse, Indiana. Do you know where Lacrosse is located?

A. It is located up near Chicago, I believe in the northwest part of the state.

Q. Well, is it reasonable to expect that there would be any close level of rates, that is, in the amount of rate, from Chicago and Peoria to Lacrosse as Lacrosse is practically [fol. 802] within the switching limits of Chicago?

A. Well, of course, Mr. Childe picked out a point there where the difference is very wide. If he had gone on down a little farther he would have found some where the difference was very slight and, of course, the story there is very different.

Q. You are through with the answer?

A. Yes.

Q. Has there ever been any real relationship in the local rates from Chicago and Peoria to the State of Indiana?

A. No, there is no relationship at all.

Q. Do you know the local rate from Peoria to Evansville?

A. Yes, sir; 65 cents.

Q. Do you know the local rate from Peoria to Louisville?

A. Yes, sir; 18 cents.

Q. And to Cincinnati?

A. 18 cents.

Q. Do you know why those rates were published in that manner?

A. I think I do. In my opinion they were published as an equalizing basis to points in the southeast with the movement through St. Louis.

Q. So for you to establish any basis or definite relationship between Chicago and Indiana points and Peoria and Indiana points is practically without question, isn't it?

A. It is so long as equalization in the southeast will not be given any consideration.

[fol. 803] Mr. Bradford: That is all.

By Mr. Root:

Q. Mr. Wheat, I understand you to testify that there has been a rate adjustment between Peoria and the Chicago markets and that the permitting of reshipping privileges on ex-barge grain has broken that adjustment between the two markets, is that correct?

A. Well, it hasn't broken the rail adjustment, Mr. Root, if that is what you mean.

Q. Well, in effect it has. As I understand you, it prevents you from getting the amount of grain that you think you should have?

A. Yes, it has had an effect upon the movement of grain to Peoria but not upon the rail.

Q. Well, there is a rail rate adjustment, isn't there, between Peoria and Chicago?

A. No stated relationship so far as origins in Illinois are concerned, to Peoria and Chicago, there is no stated relationship between the rates.

Q. Well, as I understood, it costs you about two cents more to ship to eastern points from Peoria than it does from Chicago, doesn't it?

A. We were talking, Mr. Root, about the proportional rates from Chicago.

Q. That is what I mean, the proportional rates, yes.

A. If you will refer to my exhibit number 21, pages 26 to 29, inclusive you will note there a great number of origins [fol. 804] in Illinois where the inbound local rate must be increased by specific amounts before we can even apply the outbound proportional rate.

Q. Well, now, doesn't the fact that most grain out of Chicago now that is going to the east is shipped by lake nullify the effect of the adjustment there?

A. Well, according to the records I have been compiling, the heaviest movement of grain from Chicago to the east is by lake. I have tried to show that.

Q. Doesn't that nullify any adjustment which might have been portrayed to be shown by these tariffs, between Chicago and the Peoria market?

A. It doesn't nullify the adjustment so far as the all rail movement is concerned between Chicago and Peoria.

Mr. Bradford: Will counsel indicate what he means by movement to the east?

Mr. Root: Well, what I mean is grain that is shipped from the Chicago market by rail,—shipped to the Chicago market by rail and then east by lake.

Mr. Bradford: Well, all Central Freight Association territory is east of Chicago.

Mr. Root: I know.

The Witness: Well, Mr. Root, according to the figures which were given by Mr. Tannehill there has been a considerable movement of grain out of Chicago by rail. In [fol. 805] fact, as I stated before, 16 per cent of the total inbound barge movement went out by rail. There is also shown in my exhibit, on pages 6 and 7, the amount of grain forwarded by rail. In other words, up until November 25, 1939 there have been 20,445,000 bushels of corn forwarded from Chicago by rail, 28,669,000 by lake. Now, I would say there was a considerable rail movement from Chicago. When we get to oats,—as long as you have asked me the question I am going to answer it,—the records we have indicate that up to and including November 25, 1939 there were 12,146,000 bushels of oats forwarded by rail, 449,000 bushels forwarded by lake, which was also a considerable movement. Up to and including November 25, 1939, according to the records we were able to get, wheat shipped by rail was 12,575,000 bushels and by lake 9,712,000 bushels. Again I would say a considerable movement by rail. Soya

beans up to and including November 25, 1939, by rail 2,576,000 bushels, by lake 10,024,000 bushels. Now, so far as soya beans is concerned, 80 per cent, approximately 80 per cent moved out lake but when you get to the other grains you have an entirely different situation, so the movement out by rail is an important factor.

Mr. Enoch: And those figures you just gave do not include the products that moved by rail?

The Witness: Oh, not at all.

By Mr. Root:

Q. Nevertheless, the shipment by lake is very, very [fol. 806] important.

A. Yes and so are the shipments by rail very, very important.

Mr. Root: That is all I have.

By Mr. Macaulay:

Q. Mr. Wheat, in the Peoria district there are a number of business concerns there that use grain of various kinds, principally corn?

A. Oh, yes. By far the greatest number or greatest proportion of all our grain is corn.

Q. Do you know whether or not any substantial amount of that grain is trucked into these industries and processed?

A. I doubt very much, Mr. Macaulay, if there has been a bushel trucked into the industries. Now, I wouldn't make that as a positive statement but if there has been any it has been so very, very slight that it has absolutely nothing to do with it.

Q. It all comes in by rail?

A. Oh, no. You asked me if the grain was trucked into the industries and I told you no. If you ask me if there was grain trucked into Peoria, yes.

Q. And what use is made of it when it gets to Peoria?

A. It goes into elevators.

Q. And then it is used for local consumption or is moved out?

A. It is generally moved out by barge.

Q. You mentioned that if the reshipping rates are eliminated you would have a better opportunity to compete for [fol. 807] grain. Did I understand you to say that?

A. I said if they were eliminated,—I did not make the statement but I will make it now,—that if the proportional

rates from Chicago are restricted so that they will not apply on ex-barge grain that we will be in a better position than we are now.

Q. And what do you mean by being in a better position?

Exam. Taylor: Well, now, we went all over that. Mr. Childe went all over that with him, and if you were here you should have heard it.

Mr. Macaulay: I was here, your Honor. I didn't understand that part of it.

Exam. Taylor: He certainly went into that once and I don't see the use——

Mr. Macaulay: I understood him to make the statement about being in a better competitive position but I would like to have that one statement elaborated. It will take one sentence and I am through.

The Witness: If you will tell me what statement you want elaborated, Mr. Macaulay, I will endeavor to do it.

Q. What did you mean by "being in a better competitive position"? Do you mean you would get more grain into the Peoria market than you now get?

A. It is our hope that we will get more grain into the Peoria market and ship more grain from the Peoria market. [fol. 808] Exam. Taylor: You would handle more grain, in other words, through your market?

The Witness: That is correct.

Exam. Taylor: Any further cross-examination of this witness? Witness excused. Next witness.

(Witness excused.)

Mr. Brown: Mr. Examiner, there is a witness here from the Chicago Board of Trade. He is not my witness but he tells me he has only got a statement that will cover not more than a half page and he would like to get on because he cannot be here in the daytime.

Exam. Taylor: What is his name?

Mr. Brown: E. R. Bacon.

Edward R. Bacon, Jr., was sworn and testified as follows:

Direct examination.

The Witness: I am Edward R. Bacon, Jr., president of the Edward R. Bacon Grain Company. I just wanted to have the privilege, if I might, of reading a short statement

for the record. The firm of E. R. Bacon Grain Company is on record as being of the opinion that the reshipping rates from Chicago to eastern points should continue to apply on grain arriving at Chicago via River or barge. However, as we are directly interested in grain arriving at Chicago by truck we are of the opinion that such grain is entitled to the same treatment with respect to the application of the [fol. 809] reshipping rates as is accorded to barge grain. We now go on record to the effect that if the reshipping rates are to continue to apply on barge grain it is our conviction that such reshipping rates should be applied also on truck grain. A good part of the grain that arrives at Chicago by truck comes from the same territory of production and goes to the same territory of consumption as does grain that is moved here by barge and we insist that no good reason can be advanced for the railroads unduly preferring barge grain to the undue prejudice and disadvantage of truck grain.

Exam. Taylor: Is that all you have?

The Witness: That is all I wanted to say.

Mr. Brown: Mr. Bacon, do you operate an elevator in Chicago?

The Witness: Yes.

Exam. Taylor: Where is it located? Is it located on the water?

The Witness: Yes, sir.

Exam. Taylor: Any questions by counsel?

Cross-examination.

By Mr. Enoch:

Q. May I ask, Mr. Bacon, have you received any corn in the last year or two by barge?

A. No. We are not equipped to unload barges.

Q. Would it be unfair for me to ask you to give approximately the amount of corn that you have received this year [fol. 810] at your elevator? Would you care to state that?

A. Yes, if it would be to any advantage on the record. About four million bushels this year.

Q. This year. And a somewhat similar amount last year?

A. No, a lesser amount last year.

Q. Have you any intention of going into the business of receiving corn that comes down the river?

Exam. Taylor: You mean by barge?

By Mr. Enoch:

Q. By barge. Have you in mind engaging in this barge grain business at your elevator?

A. Yes, just the moment we could be convinced thoroughly that it was best we would change.

Q. The only reason I ask that was, as I understand your direct testimony, that was the only reason that I could see why you would be in favor of having the continued application of these outbound proportional rates on barge line grains.

A. No. My statement simply meant that there is a lengthy statement to which we are a party. Wouldn't that answer you? In other words, we were one of all the Chicago shippers operating on the water who made this petition that these rates be continued.

Mr. Enoch: That is all.

By Mr. Brown:

Q. Mr. Bacon, will you unload in one day as much as 15,000 to 30,000 bushels from trucks?

A. Yes, sir.

Q. And do you usually hedge that grain in the pit that [fol. 811] you unload from the trucks?

A. It is treated exactly as any other grain. My answer would be "yes" with that qualification.

Mr. Brown: All right.

Exam. Taylor: Is that all, Mr. Brown?

Mr. Brown: Yes.

Exam. Taylor: Mr. Cole?

By Mr. Cole:

Q. Mr. Bacon, I understood you in answer to Mr. Enoch to say that you are not handling any grain that arrives in Chicago now via water?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. And is it correct for me to understand that you are interested in the continued application of these proportional rates to the water grain in order that the truck grain may be treated the same as the water grain and secure this proportional rate?

A. No, sir. If it is granted to barges we insist, as I have stated here, that it should be afforded to truck grain.

Mr. Cole: I see. Thank you.

By Mr. McCarthy:

Q. Mr. Bacon, do I understand by that that it would be perfectly satisfactory with you that the suspended schedules be found justified?

A. Oh, no. We are definitely of the opinion that the rates should be continued.

Q. On barge?

[fol. 812] A. Ex-barge.

Q. And in order for you to get any benefit it then must be made applicable on truck grain?

A. Exactly.

Mr. Oliphant: I don't think the witness stated that in his prior answer. He anticipates handling barge grain, as I understand it.

Exam. Taylor: I think he was anticipating at that time, Mr. Oliphant. Mr. McCarthy's question went to the present conditions, what were his present conditions? The other went as to the future.

The Witness: That was as I understood it, Mr. Examiner.

Exam. Taylor. That is the way I understood it. We got confused yesterday along the same line with one of Mr. Macaulay's questions.

By Mr. Root:

Q. Mr. Bacon, as a member of the Board of Trade and one who, I assume at least, is interested in the Chicago market, are you in favor of retaining the reshipping privileges on barge grain even though you might never get reshipping privileges on truck grain?

A. I have so stated already.

Q. Will you state in a general way the territory from which grain is trucked to Chicago by you?

A. I think it could best be described by perhaps drawing a radius of a progressive distance, so to speak. Perhaps mostly within 60 to 65 miles of Chicago, although in in-

[fol. 813] stances very much farther.

Q. In what particular direction?

A. Northwest and west and south, an entire circle all the way around the corn belt.

Q. How far down the Illinois valley do you?

A. We have gone down to—Mr. Examiner, could I ask a man who knows much more about that so that I won't make a misstatement? It is way down—one of our men sitting back there, he handles that, he knows more about it.

Exam. Taylor: Is there any objection to his refreshing his recollection?

Mr. Root: Not at all.

The Witness: Paris, Illinois is as far south as we go.

Q. How far is Paris from Chicago, approximately?

A. Oh, you are going to get over my head again.

Q. 150 miles?

A. Farther than that.

Exam. Taylor: Is that all your questions, Mr. Root?

Mr. Root: Yes.

Mr. Brown: I would like to ask Mr. Bacon another question.

Exam. Taylor: Let us see if they are through here first.

Mr. Childe: I have a few questions.

Exam. Taylor: All right, proceed.

By Mr. Childe:

Q. Does your company also handle rail grain at your elevator?

A. Oh, yes.

[fol. 814] Q. And do you reship it to the east on these reshipping or proportional rates that are involved in this proceeding?

A. Do we make shipments east of here by rail?

Q. Yes.

A. Oh, yes.

Q. On the proportional or reshipping rates?

A. We do a rail business east of here.

Exam. Taylor: On truck grain?

The Witness: Oh, no. Do we make shipments, he has asked me. Yes, we ship by rail and by water in any direction we can get a buyer.

By Mr. Childe:

Q. The shipments which you forward out of Chicago on reshipping or proportional rates and reshipped by water or by rail would still be entitled to the reshipping rates?

A. Pardon me, I didn't understand. Do you mean do we ship that barge grain?

Q. No, I was asking you about rail.

A. Let us get it right then. We ship rail in any direction.

Q. Now, how about the grain that you receive by truck? Do you ship that out by rail?

A. No, I cannot except in a very few instances, where there is no necessity for transit tonnage behind it.

Q. You do not ship anything, then, on the local rates out of Chicago which are higher than the reshipping rates, as I understand you?

[fol. 815] A. No.

Q. Could you as a practical matter be able to market your grain out of Chicago on those local rates?

A. Not if the differences were very great. I am not definitely familiar with all rates, so maybe I am not answering your question.

Q. Well, for your information, the local rates are here shown as being anywhere from 10 cents a hundred pounds down, over the reshipping rates.

A. There are rates out of Chicago that we have from here where we don't have to have any. Those are the rates I was referring to.

Q. Yes, but where the local rates are higher than the reshipping rates, as I understand your answer, you do not ship on them?

A. That is correct, sir.

Q. Do you ship your truck grain out by lake?

A. That is the way with the big majority, that the big majority, practically all of it goes.

Q. If you had the benefit of the reshipping rates out of Chicago by rail on grain that came in by truck would the railroads get more of that business?

A. The volume of our rail business out of Chicago would definitely be increased.

Mr. Childe: That is all, thank you.

By Mr. Brown:

Q. Mr. Bacon, do you care to state what prompted you to [fol. 816] go into the business of unloading grain from trucks,—the competition?

A. Competition forced us to get more nearly in line with our competitors.

Q. What competition was that?

A. It was the barge grain, the grain that moved in here via water and we went into the whole thing from A to Z and the best of our opinion was we thought that this barge movement would work out better than a water movement, so we——

Mr. Enoch: You mean the truck movement.

The Witness: I beg your pardon. The truck movement would work better than the barge movement. Does that answer you?

By Mr. Brown:

Q. Yes. So your truck movement is in competition with the barge movement?

A. Definitely and only because of that.

Mr. Brown: All right.

Exam. Taylor: Anything further from this witness?

Mr. Enoch: May I ask one more question?

Q. As I understand your testimony now, the great bulk of your inbound trucked corn comes from points within a radius of 65 miles or thereabouts from Chicago?

A. Yes. I might have to raise that a little but it is approximately that.

Q. 70 miles?

A. Yes, I would say 70 miles would cover it.

[fol. 817] Mr. Oliphant: Mr. Examiner, may I have one more question?

Exam. Taylor: All right, Mr. Oliphant.

By Mr. Oliphant:

Q. Mr. Bacon, if this adjustment was such that it would eliminate this barge competition that forced you into the truck competition, would that then make you go back to the rail and quit this truck competition or this truck movement that you are participating in now?

A. That is a pretty tough one. You mean if the barges no longer operated would we operate by truck?

Q. I mean if this adjustment which is under suspension here would be permitted to go into effect, in other words, the proportional rate to be restricted so as not to apply on barge

grain, would that permit you then to go back to the rails and quit your own trucking?

A. No, it would not, simply because the barges would be able to move grain in here cheaper than the rail rates and I have to bring grain in here competitively with my competitors.

Mr. Oliphant: That is all.

Exam. Taylor: Is that all?

Mr. Sparrow: I would like to ask one question. Mr. Bacon, do you operate your own trucks?

The Witness: No.

Exam. Taylor: Is that all? Witness excused. Next witness.

(Witness excused.)

Mr. Root: I call Judge Hayes.

[fol. 818] FRANK H. HAYES was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

A. Frank H. Hayes.

Q. And you reside in Morris?

A. Morris, Illinois.

Q. What is your occupation?

A. Well, I am a Judge part of the time and a farmer the rest.

Q. Judge of the Circuit and Appellate Court?

A. Yes.

Q. Describe your farming interests, Judge.

A. Well, I have land in Grundy County and Kendall and LaSalle and Kane.

Q. Several farms in all?

A. That is right.

Q. You understand that the issues in this case are whether or not the reshipping privileges should be removed from ex-barge grain?

A. Yes, that is the way I understand it.

Q. Now, do you feel that you have an interest in this case?

A. I do.

Q. Will you state what that interest is, please?

A. Well, during the time that I have been engaged in farming, which runs back about 25 years, after the water transportation came it brought us a net of five cents a [fol. 819] bushel in that valley more than we had before for our product. For instance, take on corn prior to the time that the waterway was in operation, when I would go to sell corn the bid I would get would be nine and a half or ten cents a bushel under the Chicago cash market. Since the waterway has been operating I am able to sell it within about five cents of the Chicago cash market. Does that explain the point you want?

Q. Yes. Now, do you care to make an estimate in dollars and cents how much that means to you and your tenants in any particular year, we will say an average of 40 bushels of corn to the acre?

A. Well, that is just a matter of multiplying, but, of course, it is substantial, a substantial amount to either any of my tenants or to myself. Lots of years it has been the difference between a balance sheet that showed a profit and one that if I hadn't it we would have been in the red.

Q. How long have you lived in Morris, Judge Hayes?

A. Over 30 years.

Q. For the benefit of this record I wonder if you would state briefly the history of this waterway as you have observed it in Morris during the time that you have been there?

A. Well, when I heard my friend Mr. Brennan testifying here this afternoon about the danger of the Board of Trade being moved off the exchange building down to the river it almost is history repeating itself. Originally the Illinois [fol. 820] and Michigan Canal drew its grain from about the same boundaries as the Illinois River is now drawing it. From 1848 to 1879 or 1880, from that same belt the grain came to the river, to Morris and to Seneca, Marseilles, Ottawa and on down and was transported by water almost exclusively. On Canal Street, which was the street in Morris that had the docks on for loading, we had 19 warehouses, grain warehouses built along that street. Then starting in about 1880, 1881, the railroads, the Rock Island and the Chicago & Alton and the Wabash and the Illinois Central and the Big Four crossed the territory and an ele-

vator went up at Mazon and one at Gardner and one at Dwight and one at Fairbury and all that was left o Morris was three or four millers up against the town. T e rails could do the job and did for 25 or 30 years splendid , gave us good service, good rates and put the old Illinois and Michigan Canal out of business and properly so, but these investors that had their elevators on Canal Street lost their investment. The only record of it you will find now is in the court house where there were receiverships and bankruptcies, and all that business passed with the progress that was being made in transportation. Then there came a time, starting in about the time that Deneen was governor in this state, where there was a strong public demand to improve the Illinois River. Governor Deneen, Dunne, Small, all, at every session of the General Assembly in their message recommended it, every United States Senator. After some 20 or 25 years of agitation the people of the whole [fol. 821] state passed a twenty million dollar bond issue, not in the Illinois valley; it carried in the City of Chicago, it carried the entire State of Illinois, throughout the state. At that time there was opposition to it and a prediction that they never could make a navigable stream out of it, that it was so flat it would fill up with mud and it never could be made to operate and that it would be a political football, there would be corruption with the taxpayers' money. Finally the State started in as a state project with the twenty million and has done a very worthy job. In 1930 I think it was the Federal government took it over and finished it as a federal project. It has proved it is successful. The taxpayers and the public have got in the improvement every dollar they have in it paid back. It is a great blessing to the Illinois valley and its farmers. It would be a mistake backward now to try to smother it, try to stop it. You may stop it for a day or a week or a month but in the end it will stand up, just like our elevator boys sitting out there now. The first year it operated they had their cooperatives at Mazon, they had them at Dwight, at Gardner, and they fought it. They were on the railroads and they didn't want to see it exist. We had one little fellow, a country boy, from over in County of—from over in Kentucky,—or, rather, from over in Kankakee County come in there and put a small elevator on the river and I tell you the first year that he operated was pretty [fol. 822] rough going because all the machinery of the

grain trade was pitted against him but with all the opposition Finnegan succeeded and now these other elevators have got in line and they are taking advantage of that cheaper and more efficient transportation and every one of them is shipping to the river and what is true of Morris will go on down the valley and I would hate to see the government after as good a job as the Army did, see some other branch go counterwise. I think that is about as much, Mr. Root, as I had in mind.

Mr. Root: I think that is all I care to ask the Judge.

Mr. Enoch: I don't think he should ask you to go any farther than you have, Judge.

Exam. Taylor: Cross-examine.

The Witness: You know, 25 or 30 years ago you used to come down and make life miserable for me, Bert.

Mr. Enoch: I wish that were offered as a compliment to me. I am sure it was not, although intended to be such.

Cross-examination.

By Mr. Brown:

Q. Judge, how far from the Morris elevator are your farm lands located?

A. Well, I have got some of them as close as two miles and the furthest is 40 miles.

Q. And is that all trucked over to the river elevators?

A. Yes.

Q. You do not operate an elevator, as I understand it? [fol. 823] A. No.

Q. So this grain of yours and your tenants also is trucked over to Morris?

A. Yes.

Q. Do you or your tenants do your own trucking over there?

A. Well, that depends on the bids. Now, if they will bid me on the farm cheaper than I can afford to truck it, or the tenant can; why, we will sell the people the grain on the farm. If I get a better bid at the elevator I will take it down. I think it breaks even, averages about half and half.

Q. What has the difference got to be before you will truck it yourself?

A. I usually figure about a cent.

Q. A bushel to get it in there?

A. Yes.

Q. Now, you spoke about you net five cents a bushel more than you used to. Now, do you mean by that that the price that you get delivered at the Morris elevator is quite consistently five cents a bushel under——

A. On corn.

Q. —on corn under the Chicago price of the same day?

A. That is correct.

Q. You spoke of Len Small. Wasn't Len instrumental in spending a lot of money for roadways through Illinois, highways?

A. That is right.

[fol. 824] Q. At public expense?

A. Yes, and did a very good job of it.

Q. Yes. He was reelected on it as I recollect it.

A. He gave the people more pavement than we ever dreamt we would have.

Q. When you make it with public money you can do a lots of things, can't you?

A. Yes, but there is a lot of other public money goes that we don't have any pavements or anything else usually.

Q. Well, I don't need to ask your politics. Well, now, when the price was generally ten cents at the country station under the Chicago price was that because the rail rate was so much higher than the barge rate?

A. Well, I have never analyzed that. For instance, if I have got a crop of corn to sell I will get ahold of a Chicago paper and see what the cash market was that day and then go to Decker and see how good a price I can get. In the old days I just knew it just wasn't in the cards to get more than about nine and a half under what they were paying up here. Now, I never broke it down to find how much the elevator got or how much Brennan got for selling it up here or any other items that went into it but I do say that now I can go direct to these boys on the river and get them to bid me up where I am about five cents under the Chicago cash price.

Q. You do not patronize your friend Brennan any more?

[fol. 825] A. I would if it would give me as good a price as this is.

Q. Judge, when you deliver your grain at the elevator at Morris and get your money you are through with it, aren't you?

A. Yes.

Mr. Brown: That is all.
Mr. Cole: May I ask one question or maybe two?
Exam. Taylor: Yes.

By Mr. Cole:

Q. Judge, you now move all of the grain that is raised on your farms via this water method of transportation or, rather, you sell that down there at the water, don't you?

A. No, once in a while I will get a—take, for instance, at Batavia, if they are bidding pretty well up to what I can get at Morris I will leave it go rail because the haul is so far and then I am a little bit interested in keeping the elevator there so that if I do get in a pinch, why, we have got that facility.

Q. Do you understand, Judge, that if this rule that is proposed is permitted by the Commission that there will be an impossibility of continuing the movement of grain from your vicinity of Morris to Chicago via water?

A. No, I didn't have that understanding and do not now. The point in it that I had in mind is that the Illinois waterway ought not to be treated any different from any other waterway that leads into the Great Lakes or into the City [fol. 826] of Chicago and if there is going to be a re-loading privilege going east for the farmers of Wisconsin that load onto Lake Michigan, or Minnesota or Michigan, us people down the valley on the Illinois River ought to have the same privilege and it just isn't any argument that because somebody has an elevator or a railroad that is a little point that we ought to be handicapped and held back on that account.

Q. In your mind do you think that the carriers do have, for hearing here is permitted to go into effect that it would change, that that in itself would change in any way the extra price that you would get for your grain because you were able to ship it via water to Chicago?

A. Well, the man that is buying it in order to send it east has got to pay more freight to have it go east. Of course, it would come out of me eventually.

Q. Well, Judge, when they come down there and buy grain from you at Morris and if out of all of that grain that did move into Chicago via that waterway only one bushel out of five moved east of Chicago via the rail, how could you press down any benefit to the whole mass, to the other four

bushels of grain to this proportional rate privilege east of Chicago?

A. Well, I never attempted to trace that down. The only answer I can make you on that, that if I get a good price for four bushel- of it I want to get the same good price for the fifth bushel.

[fol. 827] Q. Then if it was only possible to give you the price on the one bushel out of five that moved to Chicago via the waterway you feel that there should be some arrangement made so that the other four bushel- could be put into that same price range with that one bushel out of the five, is that it?

Mr. Root: Pardon me. I didn't hear that question. Will you read it for me, please?

(Question read.)

Mr. Root: If your Honor please, I object to that. I think it is outside of the scope of direct examination. The Judge has merely testified that he was getting more. He does not profess to be a rate expert here or a rate man.

Mr. Cole: This has nothing to do with rates. It is what he bases his plea on that he is getting more money for his grain because of this proportional rate east of Chicago.

The Witness: Well, of course, it is not a plea on my part. It is just simply a fact that I did not get it before the waterway and I am getting it now, that is just a fact that exists. I misunderstood.

Q. Look, here is the thing, Judge, that I am trying to draw to your attention: The Illinois River waterway has been made, has it not?

A. That is right.

Q. It is there?

A. And a good job.

[fol. 828] Q. It is there?

A. And it works.

Q. It is there?

A. That is right.

Q. We are not going to dry it up, are we?

A. I hope not.

Q. After we make these changes in our tariffs you are convinced that your waterway is still going to stay there, aren't you?

A. I would think so.

Q. If it is cheaper to move your grain from Morris to Chicago in barges on that waterway what can the railroads do to interfere in the slightest with the price that you are to get for your grain at Morris because of the water transportation that you have available for you at Morris to move your grain from Morris to Chicago? What in the world can we do to affect that price by one-tenth of a penny?

A. If you are giving your Wisconsin farmer and your Minnesota farmer and your Michigan farmer an eastern market by giving this re-loading privilege from the water to rail and go east that way I want the same thing and every other farmer that is in Illinois that is close to a water route wants it and there is no reason why we should be discriminated against or why in your schedule you should pick out the Illinois waterway and exclude it from the benefit.

Q. Now, Judge, with that proportional rate being in [fol. 829] effect for at least four years, if it were shown that of all the grain that moved to Chicago on the waterway only 20 per cent of that grain moved out under the proportional rate do you think that that proportional rate privilege had any direct bearing on the price that you were able to secure for any of the grain at Morris?

A. Well, of course, I haven't any way——

Mr. Root: I object to that unless you state all the facts concerning it.

The Witness: I haven't any way of passing on that intelligently. All I know as a farmer is that the waterway has made me a nickel a bushel and that I do know and I can show it from my receipts. Now, when it comes into an involved proposition of these tariffs and allocating them and analyzing them, I won't attempt to do it, I can't do it, I am not in that business.

By Mr. Cole:

Q. All right. Now, Judge, then will you take this set of circumstances and consider it: If the grain that you have been selling at Morris, that you have been getting an extra nickel a bushel on because you have been able to sell it at Morris for transportation via the water line,—if that grain that you have gotten a nickel more for now has been moving to Chicago and then has been moving out of Chicago over the lakes and that that method of doing business is the method that has enabled those buyers at Morris to pay you

five cents more a bushel for it and if that same situation is to continue do you anticipate any difference in that nickel [fol. 830] more than you are getting?

Mr. Root: If your Honor please, I object to that on the grounds that the witness has stated that he doesn't know anything about these rates. He has stated here that he knows he is getting a nickel a bushel more and that has been his entire statement.

Mr. Cole: I don't want to argue. I am trying to get why he thinks he is getting a nickel more and why he thinks this thing is going to bother him.

The Witness: I don't think. I know that.

Mr. Root: He knows that.

Mr. Cole: If this gentleman who objects to my question——

Exam. Taylor: Mr. Root.

Mr. Cole: If Mr. Root, who objects to my question, will admit that the man don't know anything about what goes into this nickel more, if he will definitely admit that now on the record I will quit cross examining him.

Mr. Root: The Judge has admitted that he doesn't know it. I will put on other witnesses who will show how that is all made up. We are going to develop that. It so happens that the Judge, testifying as the last of our witnesses, is the first and I wish you would bear that in mind in considering the testimony.

Mr. Cole: Oh, sure.

Mr. Root: We are going to put men on all down the line, of course. He is the producer at the end. We will develop [fol. 831] that fully. My only purpose in putting him on was to show that as a producer he is getting a nickel a bushel more.

By Mr. Cole:

Q. Well, Judge, what do you think will happen to you as a farmer at Morris if this proposed railroad should change, or the tariff change is permitted to become effective?

Mr. Root: Well, I object to that question.

Exam. Taylor: Objection overruled to that.

The Witness: If the railroads,—or the Commission here take and cut off our eastern opportunity to ship on these

rates, the same as grain originating on other water courses, it is going to hurt. If that goes further and there is more handicaps and more handicaps, either by the state or the government or the railroads, why, they probably will put the Illinois waterway out of business eventually.

By Mr. Cole:

Q. Judge, how much do you think it is going to hurt you?

A. I can't say but I do know this, that there just isn't any reason why the Illinois waterway should be discriminated against.

Q. Well, eliminate from your mind this question of discrimination. How much do you think that this will affect and change your personal situation if this change is allowed to be made effective? Do you think in any way this is going to change the price?

A. There is no way that I can give you to the fractional part of a cent what advantage it is. I can't say that. All I [fol. 832] do know is that I now have got a chance to go east the same as grain coming in via the Great Lakes. I know that is beneficial to me. Now, if you get that away from me it is going to hurt me some. I can't tell you whether it is going to be half a cent or a cent or a cent and a half because there are just too many things entering into that there that I have got to build on hypothetically.

Q. All right, but with all the hypothetical things that you think may be involved in there now and picturing it as dark as you care to picture it, do you think that this change, if it is permitted to become effective, will hurt you in the amount of money that you are able to secure for your grain at Morris?

A. I do.

Q. You do?

A. Yes, sir.

Q. And that is based upon the fact that it is taking the price away from you?

A. It is taking a market away from me, certainly.

Q. It is taking a market away from you?

A. Yes, sir.

Q. Do you know now how the grain that is being shipped on the waterway into Chicago is moving out of Chicago? Do you know where that market is now?

A. Only as I am told. I go to the elevator and I ask him what he will bid for number 2 corn, for instance. He gives

[fol. 833] me his price. If I think that is enough I make the delivery and I take the money and put it in my pocket. The only thing I do know is that I am getting a nickel more than I got before we had the waterway and every other farmer in the valley knows that.

Q. All right. And if you would still get the same nickel more if this change went into effect you would not be concerned with the change, would you?

A. That is just inconsistent.

Q. Well, let us take it as a hypothetical question: If you were still getting that extra nickel more you wouldn't object?

A. It is like assuming that two and two is five.

Q. You are convinced that this change will affect you in the price that you get at Morris for your corn?

A. That is right.

Q. That is the only way it could hurt you, isn't it?

A. That is right.

Mr. Cole: That is all. Thanks, Judge.

Exam. Taylor: Anything further?

By Mr. Enoch:

Q. Judge, you seem to be very much concerned about some alleged discrimination against this barge grain coming from a point like Morris into Chicago. You think it ought to take this proportional rate outbound from Chicago the same as all rail grain; that is your position, isn't it?

A. Well, now you are speaking in terms there that I don't follow you. I want to be treated just the same as some [fol. 834] farmer that is raising corn up in Wisconsin and he loads it on the lake front and he comes down here and he has a right to go east on a waterway rate. I want that schedule the same, not to have it printed in there, "This shall not apply to the Illinois Waterway."

Q. I thought you understood my statement or your counsel would have explained,—perhaps he has and I am not clear about it,—what is involved here is an effort on the part of the eastern lines to prevent the application of the so-called proportional rate eastbound out of Chicago on this barge grain from a point like Morris. Now, I understand your position is that to deny the application of that proportional rate on barge grain is a discrimination. That is your position and you so stated. Now I wondered if you would

also feel that there was something to Mr. Bacon's point, to whom you listened. He is the man who preceded you on the stand. He does not get any grain by water from Morris but he gets three or four million bushels a year by truck that comes from Morris and points even farther away from Chicago than Morris, but largely from points within a radius of seventy miles of Chicago. Now, do you think that if you are discriminated against, if the proportional rate is denied you on barge grain, that Mr. Bacon is discriminated against because he cannot take that proportional rate on his inbound trucked grain?

A. Well, I wouldn't have any way to pass on that intel-[fol. 835] ligently. As far as I am concerned I am willing to let Bacon have just as good a deal as I get, just so that I don't get euchered out of it and the Wisconsin boy and Minnesota boy get it.

Q. Has he the same right to it that you have?

A. I have never given any thought to it. I don't know.

Q. Does any reason occur to you now why there should be a difference in the respects we just mentioned between grain inbound by truck, that a man sends his own truck out forty miles from Chicago, gets some grain and puts it in it and brings it into Chicago in an elevator and then sends it out and then he goes out and puts it in the boat and puts it in an elevator and then wants to ship both inbound loads to New York, do you see any distinction between those two outbound shipments? Should they have the same rate or a different rate?

A. Well, as a superficial view of it I don't see that there should be any difference but I would hate to make any recommendation because I have had no experience.

Q. Well, as a Judge you would have some hesitancy in denying it to the inbound truck grain and giving it to the inbound barge grain?

A. I am interested in this as a farmer.

Q. In whose administration was it when this twenty million dollar appropriation was made?

A. It was either under Deneen or Dunne. I have forgotten about it.

[fol. 836] Q. That was a good many years ago, wasn't it?

A. Yes.

Q. When did they finally exhaust that supply of money, do you know, on the Illinois waterway?

A. Sometime in the late twenties, when the government came to the rescue and took the project over.

Q. And assuming that they put the entire twenty million into the Illinois waterway in the early twenties, did the government start to work on it right after that in order to complete it for transportation?

A. Yes.

Q. And did they work pretty steadily on it?

A. Yes, they went along, there was a lot of construction work and the thing went along in good despatch I would say.

Q. And how long was it before you finally got barge line transportation out of Morris?

A. I believe it was in 1934, the late summer of 1934.

Q. Have you any idea, Judge, about the amount of money that the United States government put into that Illinois waterway, how that compares with the amount that you say was put in by the state, can you give us any idea?

A. Yes, I would say considerably more.

Q. Well, eight, ten, twelve, or twenty times as much?

A. Well, corn or oats I can tell you something about but when it comes to engineering I have got to pass it. I don't [fol. 837] think it was any more, though, than the State of Illinois gave the Illinois Central when they started, though.

Q. I am only interested in what they gave the Rock Island. Do you know whether the State of Illinois gave the Rock Island anything?

A. No, and I haven't any feeling against the Rock Island. You have done a splendid job.

Q. You think they ought to continue to operate down there through Grundy County?

A. But you got so high that with the price of grain we could not afford the luxury of travel on the Rock Island.

Q. Did you sell any corn this year?

A. Yes.

Q. What did you get for it a bushel?

A. Oh, I got from 46 to 55.

Q. I want to explain that I haven't the slightest doubt in the world, Judge, that when you say you made a nickel extra by reason of this barge line transportation that you meant just what you said and I am not trying to check up on you at all but it is always possible to arrive at the wrong conclusion when the facts are as complicated as they are in connection with a situation of that kind. Now, I was just

wondering if you would not be willing to tell us,—you sold your grain on a certain day for so much money and tell us where you sold it and whether you sold it to a river elevator or not? Can you do that for us?

[fol. 838] A. Over what period of time?

Q. No, just this fall you sold a batch of corn from one of these farms. It might have been one thousand bushels or two thousand bushels at a certain time. Now, could you tell us what you got for that, Judge?

A. No, I couldn't without looking at my books. I can furnish it to you if you want me to send it in.

Q. You say you sold some corn for as low as 46 cents a bushel?

A. Yes.

Q. Did you sell that to a river elevator?

A. I don't know now.

Q. Well, I am just wondering if you are not mistaken about that and whether or not you did not get more than 46 cents, because I sold some corn at least three hundred miles west of you for 40 cents a bushel.

A. At what time?

Q. Along about——

A. August?

Q. No, no, this year's corn.

A. Well, now, you said "this year." I thought you meant 1939.

Q. I am talking about this year's crop.

A. I haven't sold any.

Q. Have you sold any of this year's crop?

A. Not any of the new corn, no.

Q. When was your corn sold?

[fol. 839] A. Oh, I sold corn all during the year up till—I think I sold some as late as August and I got as low as 38 cents, you know,—yes, about 38 in July and August.

Q. What was the least price you got for it when you sold it in August?

A. I won't attempt to tell you. Now, if you want my actual sales, I will get them off the invoices, I have got records of them and will furnish it to you, but to just pick them out here I can't tell you.

Q. Was all this corn sold in August to a river elevator?

A. No. I sold corn in Batavia that went to the river. I think there was a driver—I think we either sold it to country elevators that eventually went to the river, except the

Batavia corn. I think that was the only corn that went rail. The corn at Verona, Illinois is all shipped via the river. You see, the rails are out of business down there. It isn't my fault if I go to an elevator that is on a railroad and they don't ship over your line. They do ship over the waterway because they can do it cheaper, you know.

Q. It isn't your fault unless you had something to do with getting that twenty million dollar appropriation.

A. I think I voted for it.

Exam. Taylor: Is that all, Mr. Enoch?

Mr. Enoch: Yes.

Exam. Taylor: Any other questions? Anything on re-[fol. 840] direct? Witness excused. Next witness.

(Witness excused.)

FREEMAN BRADFORD, was sworn and testified as follows:

Direct examination.

Exam. Taylor. Give your name to the reporter, Mr. Bradford.

The Witness: My name is Freeman Bradford. I am employed as traffic manager of the Indianapolis Board of Trade at Indianapolis, Indiana and have been so employed for the past 21 months. Prior to my present employment I was for 15 years employed as secretary and traffic manager of the Sioux City Grain Exchange of Sioux City, Iowa. The Indianapolis Board of Trade as an organization comprising among its member individuals, firms and corporations engaged in the grain and milling business in the City of Indianapolis and is the governing body of such business. The Board of Trade maintains a traffic department, one of the duties of which is to represent such members at all proceedings involving rates on grain and grain products. I received instructions from the transportation department of the Indianapolis Board of Trade to appear at this hearing and represent such members. There are 22 such members in the market engaged in the milling and grain business. The Elevator capacity in Indianapolis is six and a half million bushels. In addition we have two milling concerns engaged in processing corn into corn products and

one large flour mill. We are appearing here in support of [fol. 841]the respondents. I am familiar with the subject involved at this proceeding. The pricipal territory of production from which members in Indianapolis draw their supplies is the states of Illinois and Indiana. A check with the members of the Board of Trade indicates that the volume of grain secured from northern Illinois has, over a period of years, shown a steady decline due to the transportation rates published to other markets and particularly to Chicago. In another proceeding held in Chicago a short time ago involving rates on corn grits from northern Illinois to Battle Creek, Michigan a witness representing the Evans Milling Company of Indianapolis testified that the Indianapolis market had been practically eliminated as a factor in buying grain in northern Illinois. I inadvertently forgot to put down the number of that proceeding. It was an I. & S. case. I will supply the number if it is required. Since the advent of the barge lines serving the Illinois waterways the amount of grain received direct from stations in the territory contiguous to such waterways, so far as Indianapolis is concerned, has been almost nil. What little grain has been received at the market from that territory was that grain that was purchased from dealers in Chicago on the basis of reshipping rates from Chicago and who, in making such shipments, place Illinois waterway origin billing behind the shipments. I might add, Mr. Examiner, that that particular business was done by millers and not by elevator operators. This matter has been on the [fol. 842] docket of the Central Freight Association several times and we have, as a market, supported any proposal whereby the rail grain carriers from Chicago would restrict the application of the reshipping rates in such manner as would afford all mills and dealers an equal opportunity to bid for grain in any particular producing territory where the routes from that producing territory through the market are with the bounds of reasonableness. The matter was on Central Freight Association docket under No. 57157 and was subject to a conference in Chicago in January, 1939. There had been a prior hearing in December, 1938. This conference, however, did not result in the publication of the restriction of the application of the proportional rate in such manner that they would not apply on ex-barge grain received at Chicago or at South Chicago.

Another conference was held in June, 1939, at which time all of the present protestants were represented, as well as the shippers and markets in support of the respondents; all were given an opportunity to express their views. As a result of that conference the parties participating were advised on July 28th that the traffic executives of the Central Freight Association and Official territory lines had considered the matter and had recommended that the tariffs be amended, effective on legal notice, to discontinue the application of the proportional rates on ex-barge grain. The matter was subject to another conference on September 1, 1939, at which time the same protestants again stated [fol. 843] their views to the committee, but the parties in support of respondents' proposal to limit the application of the reshipping rates were able to convince the carriers that the cancellation was proper. As previously stated, the members of the Indianapolis Board of Trade have been most effectively eliminated in purchasing grain at stations in northern Illinois adjacent to the Illinois waterway for direct shipment to Indianapolis. The rates of the barge line operators, except the Federal Barge Line, are not subject to the jurisdiction of the Interstate Commerce Commission and are not filed in any such manner that our members can ascertain with any degree of certainty under what rate the grain is moved via barge to Chicago. They are aware of the fact that the barge movement to Chicago, coupled with the rail reshipping rates from Chicago, has created a condition which amounts to a monopoly in favor of a few elevator operators in Chicago in purchasing grain from this origin territory and a situation which forces Indianapolis dealers to purchase such grain from Chicago operators instead of from country dealers, thereby eliminating free, open and competitive bidding at the country points for the reason that it would be impractical, if not wholly impossible, for the operator at Indianapolis to purchase grain in barge lots for shipment to Indianapolis with the attending transfer from the barge to cars at Chicago. Mr. Examiner, I would like to read into the record a few rates that are not shown on the exhibit which I will later introduce. Now, [fol. 844] I cannot see any difference between grain arriving in Chicago by barge moving via some unregulated transportation system than grain moving by truck that is unregu-

lated and I would just like to point out for this record that this situation goes far beyond Illinois. Taking the station of Sheff, Indiana, a station on the Big Four Railroad, which is directly intermediate on the route from Chicago to New York, your local rate is 34½ cents, which is the local rate from Chicago. Now, grain arriving in Chicago via barge can move to New York, under the present tariffs, for 26 cents per 100 pounds. Now, to my mind that grain is no different whatever than grain arriving in Chicago by truck, nor is there and difference in grain arriving at any other point by truck. Now, if that grain arriving there,—if that grain arrived at Sheff, Indiana by truck it would pay 34½ cents, or 8½ cents higher than the grain from Chicago that moved in here via barge and Sheff is directly intermediate and I am of the opinion that there is a definite Fourth Section violation. Now, something was mentioned here today, the station of Paris, Illinois. If grain is trucked to Paris, Illinois the local rate to New York which the Paris operator would have to pay to get that trucked grain to New York is 38 cents per hundred pounds but the barge line grain into Chicago, moving via an unregulated transportation system, would be 26 cents and the truck grain to Chicago would be 34½ to New York. Now, it goes much further than that. We can take the station of Indianapolis. Trucked grain [fol. 845] into Indianapolis would pay 30 cents to get to New York while this barge line grain, that moves into Chicago, pays 26 cents. The next station that I am going to show is Glenwood, Indiana, which is practically on the Ohio State line, on the B. & O. Railroad. A load of grain trucked to Glenwood, Indiana and subsequently shipped via rail to New York would pay 30 cents per 100 pounds as against the grain that is moved by barge into Chicago and moves to New York under a rate of 26 cents. Now, the reason I am stating these figures is the normal market for grain produced in Indiana and Ohio is to the south and to the east. Due to transportation conditions it involves some water transportation. The south has been very rapidly taken away from us, which leaves the market for this grain to the east and certainly grain that has received no prior rail movement to Chicago and moves to New York for 26 cents is in a very fine position to move against grain that is produced at Glenwood, Indiana almost on the Ohio line at 30 cents. I would like to point out the situation at Craw-

fordsville, Indiana. Crawfordsville is just about 40 miles west of Indianapolis. Grain that is trucked into Crawfordsville pays 34 cents to New York as against the barge line grain from Chicago paying 26. I would like to refer for a minute to the proposition of these intrastate rail rates to Chicago. Here we have a situation where grain moves into Chicago via rail, that the carriers will not apply the 26 cent rate that will apply in connection with the barge line grain [fol. 846] unless that intrastate grain,—unless that intrastate rate is hiked up to the basis of the Illinois specific and that also is a discrimination against the buyer in Indiana who buys grain in northern Illinois for direct shipment to his plant with the idea or the intention of storing or processing the grain and shipping the product on to territory east of him. I will no wdirect my testimony to exhibit number 22. The exhibit consists of five pages and a cover. Page number 1 shows the production of wheat, corn and oats in bushels for the year 1937 in those counties adjacent to the Illinois waterways. We have separated the counties by first showing the total Peoria County and south and in the second section have shown the production in counties north of Peoria County and from which the principal movement is via barge to Chicago. Page number 2 is similar information for the year 1938. On page 3 we have shown the receipts of grain at Chicago via waterway for the years 1934 to 1938, inclusive. From this it will be noticed that the movement of corn on the Illinois waterways in 1938 was 10,236,000 bushels or 10,063,000 bushels more than in the movement in 1934. Reference is made to the movement of lake corn into Chicago in 1937, amounting to 18,720,000 bushels, but this includes 18,000,000 bushels of imported corn due to drought conditions affecting the previous crop. On page 4 we have shown the total amount of grain handled by water between Chicago, Illinois and St Louis, Missouri in connection with the Inland Waterways Corporation. On [fol. 847] this page it will be noted that the movement via the Inland Waterways Corporation of grain increased over four million bushels. Our reason for showing these figures is that in the testimony in I. & S. docket No. 4689, Grain from Illinois Points to the Gulf Ports for Export, this amount of grain was shown as representing the southbound movement via water from the Illinois waterways. We have then shown the total receipts of river borne corn

received at Chicago which increased in 1938 over 1937 approximately seven million bushels. The amount shown as moving via the Inland Waterways Corporation, added to the amount received at Chicago, would indicate a total movement of grain on the Illinois waterways of approximately eighteen million bushel. It may be conceded that some of the grain handled by the Inland Waterways between Chicago and St. Louis represented grain that was loaded at points on the Illinois waterways and moved to Chicago. We are here using the figures as they are reported in the testimony in I. & S. No. 4689.

By Mr. Oliphant:

Q. By whom. Mr. Bradford?

A. Well, there were two—there were about five or six different exhibits put in. I can go back and get them all but I know Mr. Sindell had an exhibit and quite a few others had them, as representing grain that moved on the Inland Waterways Corporation from your Illinois division.

Q. And that was purely a Gulf port rate case, wasn't it?

A. Yes. I am using these figures for a purpose. If you [fol. 848] will let me go ahead I will tell about it. In the last section of page 4 we have shown the production of wheat, corn and oats in the counties bordering on the Illinois waterways north of Peoria County. I note an error on page 4 opposite the word "oats" in the last section. The production should read "24,292,200 bushels" instead of "2,429,200 bushels." From this it will be noted that the production of corn in the counties indicated in 1938 was 8,200,000 less than in 1937 but the water borne movement into Chicago via the Illinois River increased 8,200,000 bushel. In other words, with an actual falling off in the production of corn the Chicago operators located on the waterways were able to overcome the falling off in production and actually increase their receipts from that territory by some eight million bushels; it really amounts to a change in position of 18,000,000 bushel of corn. The tota- production of wheat, corn and oats in the counties bordering on the Illinois waterways fell off 13,000,000 bushel and the amount received in Chicago via water increased 7,000,000 bushel. Another factor in this connection, which is not shown on the exhibit but to which we wish to call attention, is the fact that it is generally recognized that due to feeding opera-

tions on farms the average movement of corn out of the counties in which it is produced does not exceed 20 per cent. If the same figures are applied to the situation here before us the Chicago dealers are now receiving by water from this northern Illinois territory more than the average [fol. 849] shipping surplus of corn using the 20 per cent figures. We may admit that the price situation probably tends to increase the movement of more corn and make less feeding operations in this particular territory. On page 5 we have used Morris, Illinois as a representative origin point on the Illinois waterways and New York, New York as a destination. Here we have shown the total through charge, using the Illinois waterways rate of 4⅛ cents per 100 pounds from Morris to Chicago, plus the reshipping rate published by the rail carriers of 26 cents, making the through rate 30⅛ cents. As previously stated, we do not have any tariffs of the barge line operating from Morris, Illinois but the 4⅛ cent rate from Morris to Chicago was shown in the petition for suspension filed by Mr. Nuel Belnap September 1, 1939 for account of some Chicago elevators. We understand that this figure is made up 3⅛ cents for line haul barge service, plus 1 cent for trimming and insurance. The published through all-rail rate which the Indianapolis market would be compelled to pay is 35½ cents, or 5⅜ cents in favor of Chicago elevator operators using water service to Chicago. This same situation would exist to all Central Freight Association and Eastern Trunk Line territory. Another situation which we believe places the carriers in an anomalous situation is that the rail carriers operating from Morris and other points in that vicinity now publish intrastate rates to Chicago, which in the case of Morris is 5 cents per 100 pounds, but in connection [fol. 850] with a rate under which rail carriers here derive revenue, such carriers participating in the reshipping rates to Chicago, are not permitted the application of the same reshipping rates as is accorded grain moving to Chicago via an unregulated water line and as we have shown in the exhibit the balance charged in connection with such rail movement is 4½ cents higher than the reshipping rate applicable in connection with the river rate. The purpose of the 5 cent rate was to influence grain from the river to the rails but this lack of cooperation on the part of the carriers defeats the very purpose for which the 5 cent rate was pub-

lished. We therefore believe that if the rate as published constitutes discrimination the carriers should be permitted to remove that discrimination and that they either should be permitted to eliminate the application of the reshipping rate in connection with ex-river grain to Chicago or they should be compelled to apply it in connection with the lower rail rates to Chicago and by so doing afford all intermediate markets the same measure of through rates. While it is probably a matter for brief, we believe that there is no reasonable grounds for the application of reshipping rates on this ex-barge grain, having had a movement via cheaper transportation system and when such grain must enter into competition with grain products from sections not adjacent to such systems. If ex-barge grain is accorded the same reshipping rate as ex-rail grain and, as shown in this case, accorded a lower reshipping rate than ex-rail grain, the [fol. 851] only result is to lower the price paid to the producer in territories not so unduly favored. We also believe that as stated by the Commision in ma-y proceedings a reshipping rate is a part of a through rate and, if so, we believe it is a part of a through rate over which the Interstate Commerce Commission can assume entire jurisdiction and not a bclance of a through rate composed of one factor over which the Commission has no supervision and another factor over which it may exercise supervision and regulation. We therefore believe that the application of reshipping rates from Chicago on ex-barge grain is not only illogical from a common sense standpoint but it is, in our opinion, unlawful in that it creates discrimination against competing markets as well as discrimination between firms located in the City of Chicago, as well as violations of the Fourth Section which I have previously mentioned. I offer in evidence exhibit number 22.

Exam. Taylor: It will be received.

(Exhibit 22, Witness Bradford, received in evidence.)

The Witness: That is all I have.

Exam. Taylor: Any questions? Mr. Enoch? Mr. Cole?

By Mr. Cole:

Q. Mr. Bradford, I have just shown you, and you now have before you, exhibit number 6 introduced by Mr. Tannehill?

A. Yes, sir.

Q. Mr. Tannehill on his direct examination stated that these rates via barge, thence the proportional rate to the [fol. 852] east, was lower than the local rates until you got to the point on exhibit 6 which is shown in that solid blue line. Do you notice that solid blue line?

A. Yes, sir.

Exam. Taylor: Is that blue or green?

By Mr. Cole:

Q. Is that blue or green?

A. Green.

Q. All right, that is green. Mr. Bradford, is there much grain produced in that part of Indiana west of that green line?

A. I would say, Mr. Cole, it is the heaviest producing section of Indiana.

Q. What outlet does that grain produced in that part of Indiana west of that green line, what outlet does that grain have?

A. Well, generally it moves either east or to the Ohio River, but there is some movement from the stations in the vicinity of Chicago into Chicago, but the general trend of the movement is to the east or south.

Q. How does that movement divide as between the movement to the east and the movement to the south, would you say?

A. Well, I would say over a period of years that the movement of corn would probably be a little heavier to the Ohio River crossings and to the east. It varies according to the demand. It would be hard to make any definite statement but it does move in both directions in substantial volume.

Q. Do you have with you your figures showing the pro- [fol. 853] duction in this part of Indiana?

A. I don't know whether I have got them or not. I will see.

Q. I know you put them in in several cases.

A. I am sorry, Mr. Cole. I do not have the figures of production with me but I can furnish them if you desire it.

Q. Maybe we can obviate that if you can say, if you can remember how Indiana compared as a grain producer with, say, the other western states where there has been a substantial grain production?

A. Well, I can say that the corn crop of Indiana generally runs better than 129 to 130 million bushels of corn. Now, that is just the last few years. I haven't gone back of that.

Q. How about wheat?

A. And on the wheat production in 1938, I believe eighteen or nineteenth state in wheat production in the United States.

Q. That is sufficient. Thank you, Mr. Bradford.

A. That is, I mean the eighth or ninth state.

Mr. Cole: That is sufficient, thank you.

Exam. Taylor: Is that all you have, Mr. Cole?

Mr. Cole: That is all I have.

Exam. Taylor: Does anybody else have anything?

Mr. Oliphant: Mr. Examiner, I wonder if we couldn't defer further examination until the morning? It is close onto 9:30.

Exam. Taylor: I would like to get rid of him if I can.

The Witness: Off the record.

[fol. 854] (Discussion outside the record.)

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Oliphant:

Q. Mr. Bradford, I believe you stated that you are here in support of the restrictions that are under suspension?

A. Yes, sir.

Q. You further stated that you did not believe there should be given any different treatment to truck grain than to barge grain?

A. I didn't say I didn't think there should. I said I couldn't see any difference in the two movements.

Q. In other words, you believe that if the proportional rates are made applicable to ex-barge grain they should likewise be made applicable to ex-truck grain?

A. I said if they are made applicable on the ex-barge grain that there wasn't any reason why they should not but I am not in favor of making them applicable on either one.

Q. What do you say, then, as to their application on ex-lake grain?

A. Well, I haven't thought very much on that. I think that is an entirely different situation. You have a prior

rail movement up to the lake ports and I can see where the carriers perhaps have more justification for having such a rate on ex-lake grain due to the long haul to Buffalo, but from——

Exam. Taylor: Long haul to Buffalo?

[fol. 855] The Witness: To Buffalo.

Exam. Taylor: I thought you were talking about the rail up to the lake?

The Witness: Well, I talked first about the movement by rail to the lake and then I said that the carriers operating from Chicago perhaps had more reason for a proportional rate on that business than this other business on account of the movement by lake from the head of the lakes to Buffalo but from an abstract proposition, why, I think that the grain should have had an prior rail movement some place. That is the purpose of proportional reshipping rates and it has been so stated by the Commission in a number of cases that I can recall.

By Mr. Oliphant:

Q. Well, Mr. Bradford, you have stated very definitely that you did not believe the proportional rates should be made to apply in connection with any carrier unless that carrier's rates were on file and under the jurisdiction of some body?

A. Well, I will stick to that statement.

Q. Are the lake rates under anybody's jurisdiction?

A. No.

Q. Then what is your opinion as to their application?

A. I just stated my opinion, that I thought perhaps the carriers had more justification for doing it. I would not object to keeping them on the lake rates.

Q. In other words, you don't think it a discrimination to [fol. 856] apply the local rate to the ex-river grain and the proportional rate to the ex-lake grain when the carriers——

A. I didn't say it wasn't a discrimination. I said I wouldn't object to it.

Q. Just a minute. You wouldn't object to it?

A. No.

Q. Why wouldn't you object to it?

A. I said I wouldn't object to the maintenance of the proportional rates on the ex-lake grain because it doesn't hurt me.

Q. Now, you spoke of a prior rail haul on this ex-lake grain?

A. Yes, sir.

Q. Is that essentially necessary to obtain a proportional rate?

A. It isn't essentially necessary but that is what they do. I have spent many, many years in the western grain field and I think I have a practical idea how the grain is hauled out.

Q. But there is grain that is hauled out and that moves on these unfiled rates that does have prior rail movement?

A. Well, I will say this, that the great bulk of the grain that moves to the head of the lakes moves from those western ports in box cars.

Q. Is that a continuous move?

A. No, it is not a continuous move. It goes in store at the head of the lakes just the same as grain goes in store at any terminal market whether it is Chicago, Peoria, St. Louis, Kansas City or any other terminal market. Now, [fol. 857] that brings this thought up to me: The elevator terminal operator in Indianapolis is engaged in exactly the same kind of business that the terminal elevator operator in Chicago that is buying this barge grain. He is buying grain in a country elevator,—he is buying the grain in the country to bring in and store and subsequently ship and he can't do it against this barge rate to Chicago. I am glad you mentioned it.

Q. Now, on this grain that you say might have a prior haul and then moves out of the elevator via the lakes, hasn't that shipment practically lost its identification? In other words, isn't a new billing taken out via the lake carrier?

A. Well, every shipment that goes into any terminal market and goes into store loses its identity as grain. It goes into a mass, it is a fungible mass and there it is.

Q. Except for the fact that you have a transit balance where you have one billing?

A. Yes.

Q. Now, you also made the statement that perhaps the carriers would like to have this ex-lake grain and that is why they don't restrict them?

A. I said perhaps they had more reason for doing it on account of the long haul to Chicago.

Q. By that do you mean that they are applying that 18

cent rate out of Buffalo to New York and forego the hauling of this grain by rail from Chicago?

[fol. 858] A. I didn't say that. I said perhaps they had more reason for paying the reshipping,—for publishing the reshipping rate from Chicago on that grain to secure a haul from Chicago to Buffalo which they otherwise would not secure. Don't get me wrong. You know, I am not boosting the lake business because I am not on the lake but I am just trying to be fair to everybody in this proceeding.

Q. Now, in your exhibit 22, page 4, you spoke of a considerable increase: You show some figures on this page 4 of your exhibit indicating the movement of grain on the Illinois River between Chicago and St. Louis.

A. That is the movement that is shown via the Inland Waterways Corporation.

Q. Do you know how much of that grain would represent the export corn movement in 1937 to New Orleans?

A. No, sir. All I know is the figures were used in the export case to indicate the movement from the Illinois River down to the Mississippi River and on to the Gulf.

Q. So in that case they were attempting to show the movement via the Illinois River to New Orleans and now you are using these figures here and attempting to show the movement via the Illinois River to Chicago?

A. You didn't listen to my testimony. I used these figures to show that there was this movement of grain, this amount of grain moved on the Illinois waterway south and [fol. 859] then the total receipts of the water borne corn at Chicago was so much and the two added together made 18,000,000 bushels of corn that moved on the Illinois waterway in some direction. I did not say that this corn shown as moving via the Inland Waterways Corporation moved to Chicago. I said that it moved, was supposed to move south because that is what was testified about the move in the I. & S. case involving export rates to the Gulf, but I did say that that amount of grain did move on the Inland Waterways Corporation plus the amount shown in the next section, or receipts at Chicago, via the Illinois waterways, indicated the total amount of water borne corn on the Illinois waterways.

Q. Would there be any duplication that you know of in those figures as to north and south bound movement?

A. Yes, sir, I said there may be some. I said in direct that there was.

Q. On page 5 of your exhibit you show a very nice illustration there as to the advantage that the river grain has in rates over the rail rates or combination of rail rates.

A. Yes, sir. I don't say it is nice. It is an advantage.

Q. Well, the exhibit shows a rather nice advantage, I think. What would be the picture if this restriction were permitted to go into effect?

A. If the restriction was permitted to go into effect the barge line grain from Morris to Chicago would pay 34½ cents from Chicago and the rail grain from Morris would [fol. 860] pay 35½ cents to Chicago, Indianapolis or any other gateway there was.

Q. Or a total of 38 cents barge-rail versus 35½ all rail?

A. Well, whatever the barge line rate was in here. I don't know what it would be. I am not sure about this rate except I took it from somebody else.

Q. Well, your exhibit shows that that is the rate you are using.

A. And I said where I got it.

Q. I am using your same figures.

A. All right.

Q. Now, you spoke of points like Sheff and Paris and Greenwood.

A. Glenwood.

Q. Glenwood; and also Indianapolis?

A. Yes, sir.

Q. Are you familiar with the location of Montezuma, Illinois?

A. I know where it is. Right on the Wabash River, right on the bank of the Wabash River, across the Illinois state line, yes, sir. There is a bridge across the river there.

Q. There is no through rail rate on grain from that point to New York, is there?

A. Yes, sir. I had Montezuma, Indiana in mind. I don't know where Montezuma, Illinois is, no. Pardon me just a minute. I will tell you whether there is a through rate from there or not.

Q. Well, I think Mr. Wheat's exhibit page 32 will indicate that and if you are satisfied to take it from that it is all right with me.

[fol. 861] A. I understand there is no through rate from Montezuma and I don't even know where it is.

Q. That point then is quite at a disadvantage with some of these other points shown on that same exhibit?

A. If they haven't got an all rail rate I am not opposed to them having one. I want every point to have it.

Q. Just a minute, Mr. Bradford. This point that I just mentioned is not on any railroad, it doesn't have any rail service. That is stated in the exhibit.

A. I never noticed it in the exhibit. If it doesn't have any railroad I don't know how it can have a rail rate.

Q. Well, I am just citing that point and I want to impress upon you the fact that it has no service by rail. Now, you mentioned these other points, Paris and Sheff and Glenwood and Indianapolis. Do any of those points have any water service?

A. No, sir.

Q. So to that extent they are not disadvantaged against the point that does have water service?

A. Well, Mr. Oliphant, any point that has a water service and can bring grain up to Chicago and send it to New York for 26 cents per 100 pounds against an interior point that is almost over at the Ohio line bringing truck grain in to that point and paying 30 cents is at a disadvantage and it doesn't take a lot of gray matter to figure it out.

Q. Is that any different than the point that does not have [fol. 862] any rail service to any point?

A. The point that hasn't got rail service is just about like a cross-road to me.

Q. It is shown as an important point on the exhibit.

A. I didn't show it in my exhibit.

Q. Well, the record indicates that.

A. I don't admit it is an important point.

Q. Does Indianapolis have the advantage of any water service?

A. I didn't testify about Montezuma. I don't know where it is and I am not going to say anything about it.

Q. Does Indianapolis have the advantage of any water service?

A. No, it does not.

Q. Now, is there any reason why Indianapolis without any water service should have any advantage over any point that does have water service?

A. It doesn't have any advantage over any point. I will say no, that there is no reason that they should have an advantage but it doesn't have any advantage.

Q. But you are asking that the restriction be permitted to go into effect which will place water service at a disadvantage in favor of Indianapolis?

A. I am not placing water service at a disadvantage with Indianapolis. I am removing the disadvantage that Indianapolis is under with a point that has water service and I have shown it by the figures.

[fol. 863] Q. Well, that is a matter of information,—I mean that is a matter of opinion.

A. I admit that and I think I have got the best opinion.

Q. Mr. Bradford, is there any different- in the price of grain at Chicago that is brought in by water and grain brought in by rail?

A. I don't know the prices in Chicago. It has been testified to here by almost every witness that has any knowledge of——

Q. I am asking you if you do know?

A. No, I don't know. All I know is they make different prices for I.P. billing and other billing. That is all I do know about it.

Q. Well, now, if grain reaching Chicago by water and grain reaching there by rail is of the same value what makes the competition out of Chicago?

A. Why, I think the lake is a big competitive factor out of Chicago in connection with this grain that comes in here by barge.

Q. The lake is you say?

A. Yes. It has been testified that about 80 per cent of it moves on the lake.

Q. Well, now, if these restrictions go into effect isn't that going to have a tendency to increase the lake movement?

A. Yes, it will increase the lake movement but it will also put the interior markets, such as Indianapolis and all that, in a better position to handle rail grain as against grain that comes in here by barge and moves out for 26 cents.

[fol. 864] Q. What would you say the effect would be on the points located west of the river?

A. West of what river?

Q. Of the Illinois River.

A. Well, with reference to the rate from Illinois to New York all rail through Indianapolis direct from a country point as compared with combination of the rail rate to Chicago plus the 26 cent reshipping rate,—and you have a barge line rate in there less than that,—we are at a disadvantage.

Q. You say that in the face of the fact that the corn via both modes of transportation at Chicago is of the same value?

A. I didn't say it was the same value. You made that statement; I did not.

Q. Well, is it?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Well, if this lake movement will increase because of the restriction being permitted to go into effect what, in your opinion, have the eastern carriers accomplished by the restriction?

A. I don't think it will increase it a whole lot myself. I think that the——

Q. You just stated it would increase?

A. I did not. I said that it would still be there but I didn't say it would increase.

[fol. 865] Q. I am sorry.

A. I just said that competition was there and that was the controlling competitive factor. Now, that is the question you asked me and that is the answer I gave you.

Q. You don't think, then, that the lake movement would increase?

A. It is hard to tell what it would do. It is all a matter of supply and demand and a pull from the east, whether it would increase or not. There is nobody in this room that can tell what the movement next year will be by box car. I am just telling you what the railroad position is and what the relative position is of the interior market as against the market here.

Q. What effect would it have on Indianapolis?

A. It would have this effect on Indianapolis that we have got to go around and pay 38 cents for grain in Central Illinois and this grain up in Northern Illinois can move in on some unregulated transportation system that nobody knows what the rate is and they pay 26 cents as against a 30 cent rate from Indianapolis and against 34 cents rate from a point 30 miles from Indianapolis, it certainly has a decided bearing on this grain to compete with the Illinois grain. It is simply a matter of dollars and cents.

Q. Mr. Bradford, if it affects the price that way who gets the benefit of that price?

A. I don't know. I read one petition filed and that petition explained that——

[fol. 866] Q. Just a minute. Do you know?

A. Just a minute, I am going to answer your question.

Mr. Oliphant: Just a minute. Mr. Examiner, I asked the witness if he knows and he said he doesn't know.

The Witness: I didn't say any such a thing.

Q. Well, then, do you know?

A. I know probably that goes part of it to the producer and part of it to the consumer. It has been stated in this petition that the people in the Illinois River Valley got the saving and the New England——

Q. Just a minute.

A. Just a minute, I am going to make a statement.

Mr. Oliphant: I am still not interested in what somebody states in a petition. I simply asked Mr. Bradford what he knows about it and he told me. I don't want to know what somebody said in a petition and I am not interested in that. I don't think it will do any good.

Mr. Enoch: I think Mr. Bradford has unfortunately improperly distributed any alleged saving here by confining it wholly to the producer and the consumer. I suspect somebody else gets a large share of that, if any.

Mr. Oliphant: That is all I have.

Exam. Taylor: Any other cross examination?

Mr. Childe: I have some questions.

Exam. Taylor: Go ahead.

[fol. 867] By Mr. Childe:

Q. Do you represent the grain dealers at Indianapolis?

A. Grain dealers, hay dealers, corn millers, flour millers. I represent all the grain, milling and hay industry of the City of Indianapolis.

Q. I understood you to state that Indiana producers a considerable amount of wheat as well as corn?

A. Yes, sir.

Q. Are your members interested in both wheat and corn?

A. Absolutely.

Q. You referred to Morris, Illinois as a representative point of origin on the Illinois River?

A. Yes, sir.

Q. And gave a rate of 4⅛ cents from Morris to Chicago by barge. Just taking that as the correct rate for the purpose of this question, what would the Indianapolis dealer or miller pay to get that corn from Morris to Indianapolis

if he used the barge rate from Morris, if he used the barge route from Morris to Chicago and the rail beyond?

A. Well, if he could do it he would pay the rail rate,—or the barge rate to Chicago plus, I think it is, 11½ cents,—I am not citing that from memory,—but your question is based on the proposition that if he could but he can't do it. It is not practical.

Q. Well, Mr. Bradford——

[fol. 868] A. Just a minute, now. I explained in my direct testimony it is not practical for an elevator operator at Indianapolis to go over to the Illinois River and buy barge loads of grain and bring it up to Chicago, transfer it from the barge at Chicago. He has got to pay somebody in Chicago to do that, and then bring the grain down to Indianapolis and put it in store. He just can't do it.

Q. Well, the exhibits I have before before me indicate that the rate from Chicago to Indianapolis is 12 cents. Will you accept that?

A. Yes. I forgot the increase. I will accept it.

Q. Well, assuming that an Indianapolis receiver forwarded it by barge and rail, the total rate would then be 4⅛ plus 12, or 16⅛ cents, would it not?

A. Yes, sir.

Mr. Wheat: Mr. Examiner, in order that the record may be clear on this, if Mr. Childe is referring to exhibit number 21 he will note that the rate under column B, which he speaks of, will not apply on Illinois River grain. The rates under column A will apply.

The Witness: Thank you. I forgot that.

Mr. Childe: From Chicago?

Mr. Wheat: From Chicago, yes, sir.

Exam. Taylor: What page number is that?

The Witness: Page number 39. The reshipping rate from Chicago to Indianapolis on Illinois billing would be——

[fol. 869] By Mr. Childe:

Q. As I understand it, the rate applicable on ex-barge grain is 14½ cents?

Mr. Wheat: The northwest rates, Mr. Childs on ex-river grain to CFA from Chicago.

By Mr. Childe:

Q. I will be glad to take 14½ for the purpose of my question. Then the two rates would be 14½, plus 4⅛, or 18⅝.

A. Yes, sir.

Exam. Taylor: That is without the loading charges at Chicago?

Mr. Childe: That includes a trimming charge in the 4⅛ cent rate, according to Mr. Bradford's exhibit.

Exam. Taylor: The trimming charge at Chicago or the trimming charge on the barge?

Mr. Childe: At Chicago.

Mr. Enoch: What do you understand by a trimming charge, Mr. Childe?

Mr. Childe: I don't know. I don't want to take up a lot of time on it.

The Witness: I will go ahead with your figures. I think I know what you are getting at.

Mr. Brown: Did you think trimming included the cost of the elevator, putting it into an elevator and then into a car?

Mr. Childe: Mr. Examiner, the hour is getting pretty late.

Mr. Brown: I think it is.

[fol. 870] The Witness: Well, let us get to your question and I will answer it if I can.

By Mr. Childe:

Q. What would be the all rail rate from Morris to Indianapolis?

A. Well, sir, I don't recall but I think it is about 18 cents. I don't know.

Q. Again referring to the exhibits of record I note the figure 21½.

A. That is too high. That is the rate but it is a high rate, too high a rate.

Q. Now, that would be the rate, nevertheless, to Indianapolis that the dealer must pay if he got it all rail from Morris.?

A. Yes, sir.

Q. Now, suppose that that is reshipped beyond, do you have transit arrangements at Indianapolis that would apply?

A. Yes, sir.

Q. Would those transit arrangements likewise apply on the reshipping rate from Chicago assuming that you shipped it on that?

A. Yes, sir.

Q. I believe you volunteered the information in response to one of my questions that an Indianapolis man could not use the barge route from Morris?

A. I said it would be impracticable for him to use it.

Q. Couldn't the Indianapolis man use the public elevator in Chicago?

[fol. 871] A. I think I stated in my direct testimony, Mr. Childe, if you listened, that the small amount of grain that was purchased in this territory that the Indianapolis market did receive was purchased from operators in Chicago and there is some of that grain in Indianapolis today but the fact remains that it forces us to come here to buy the grain.

Q. Well, why couldn't you go to Morris and buy it and ship it by barge and run it through a public elevator and thence by rail to Indianapolis?

A. And pay somebody for transferring it for us up here?

Q. Yes.

A. In the first place, Mr. Childe, I tried to explain that a man in the grain business operating a terminal elevator is in exactly the same kind of business as the gentleman standing behind you that is whispering in your ear, and they go into the country station to buy——

Q. I am not aware of any whispering in my ear but proceed.

A. They go into the country station to buy grain for the purpose of bringing it into that terminal market to store and subsequently ship out when they sell it and they want to have the same privilege of buying grain from the country elevator people that the elevator man in Chicago has and don't want to be forced to come to Chicago to buy the grain.

Q. Well, how about the miller that you represent? Does he have to buy the grain at Chicago if he can get a better deal here?

[fol. 872] A. But the millers do bid considerably,—they buy considerable grain in Chicago but, incidentally, one of the millers, and I think I know who the gentleman whispered

about, was represented on the transportation committee that sent me up here.

Q. And do the millers have to buy the grain in Chicago if they can get it at country prices?

A. Mr. Childe, a miller in Indianapolis would be happy to buy grain at any point where they could get it at a better price.

Q. Well, then, so far as the miller is concerned wouldn't he be able to get a lower delivered rate and, consequently, all his grain at a better price if he went to Morris, shipped it by barge and ran it through a public elevator at Chicago and then reshipped it by rail?

Mr. Enoch: I want to know what barge he is going to ship it by? Are we talking about the Federal Barge or is this man going to move it up here by his barge?

Mr. Childe: I think that is immaterial.

Mr. Enoch: Well, it is not immaterial. I would like for you to explain to the witness what you have in mind.

Mr. Childe: I think the witness understands. I object to the interruption, Mr. Examiner.

Mr. Cole: Why, does it confuse you?

Mr. Childe: I would like to proceed.

Exam. Taylor: Do you understand?

The Witness: He means if the Indianapolis man could [fol. 873] buy a barge and go in business? Why, that would be impractical. But his next question was about buying barge grain in Chicago. I think that was your last question.

By Mr. Childe:

Q. I will restate it.

A. And I will be very glad to answer that question.

Q. I asked you why your Indianapolis millers could not buy the grain at Morris, ship it by barge from Morris to Chicago, run it through a public elevator, send it on the rail reshipping rate from Chicago to Indianapolis?

A. That was four questions back. I answered that one.

Q. I don't think you did.

A. No, your last question was the Indianapolis miller buying grain in Chicago.

Q. Would you mind answering this question I just restated?

A. Why, I answered it once. It would be impracticable for an Indianapolis miller or grain merchant to buy grain

in barge load lots at Morris, Illinois, bring it to Chicago, transfer it, pay somebody to transfer it from the barges to the cars and then ship it down to Indianapolis and put it in store again.

Q. And I asked you why he couldn't do that?

A. For the simple reason it isn't logical to go out and buy that kind of stuff and have the two methods of transportation in getting it to a market.

Q. It isn't logical?

A. It isn't logical, it isn't feasible and it just isn't done.

[fol. 874] Q. All right. Now, will you tell me why he couldn't do it?

A. Well, the main reason he couldn't do it is because he hasn't got the facilities to do it with.

Q. You mean he can't go out to Morris and buy?

A. He can't go out to Morris and buy if he knows what kind of rate he is going to pay and all about it. Probably if Morris would make him a delivered price at Indianapolis he might be able to do it. If Morris would assume all the responsibility of the transportation to New York—to Indianapolis, but until a man knew how much he is going to pay to get this grain to Chicago, how much he is going to pay for transfer, how much he is going to pay to get it down to Indianapolis he couldn't make the deal and I am frank to tell you I don't know how much he would have to pay to get it from Morris to Indianapolis. This 4⅛ cents is a rate that has been put in there by somebody. Now, there has been no testimony that that is the rate that is always there.

Mr. Oliphant: It is in the record that that is the rate that is transporting the traffic. Your exhibit shows that, Mr. Tannehill's exhibit and this exhibit also.

The Witness: Oh, we took the rate from a petition filed here but there has been no testimony yet that that is the rate that moves the business. The only method we had of securing this rate was from the petition filed on your side.

Mr. Enoch: My understanding is that that 4⅛ is a com-[fol. 875] bination of things and it is not a rate at all. You can't find it in any published document.

Mr. Oliphant: The carriers seem to be using it as a rate to portray what the competition is. They are satisfied to use that 4⅛ cent rate.

Mr. Enoch: I will ask you: Will you tell me where you can find it published some place?

Mr. Oliphant: I am not using it as an illustration.

Mr. Enoch: As a matter of courtesy I want to know it.

Mr. Childe: May I proceed?

Exam. Taylor: Yes. Let us cut this cross talk out here and let us go ahead with this witness. Go ahead, Mr. Childe.

By Mr. Childe:

Q. Is it your assumption or understanding that the Indianapolis miller, if he wished to ship by barge from Morris to Chicago, could not get just as good a water rate as any other shipper from Morris to Chicago?

A. I am not making any assumption about it at all. I just say that with regard to the Indianapolis miller, if the Morris elevator operator will bid him a price and assume the transportation, include the transportation charges to Indianapolis in the price and the price is low enough, I will answer that question "Yes." Outside of that I don't know anything else.

Q. Let us assume that he can get via barge the same rate as anybody else from Morris to Chicago and he can get the 12 cent reshipping rate from Chicago to Indianapolis, is [fol. 876] there any reason why it would not be feasible for him to use that?

A. Oh, yes, from a commercial angle going down and buying this barge grain and bringing it in to Chicago and storing it is out of the question.

Q. Wouldn't he be doing the same thing if he purchased it elsewhere?

A. He would purchase a few cars at a time.

Q. Is it your testimony that the Indianapolis merchant cannot buy sufficient quantities at one time if he went by barge?

A. It is my testimony that he doesn't come to Chicago and do it.

Q. I said he couldn't do it?

A. I said he doesn't do it and it is not feasible.

Q. And you are willing to let your answer stand as to why it is not feasible?

A. Yes, sir.

Q. Now, take a grain merchant who you stated would not want to run his grain through an elevator at Chicago,

why wouldn't he if he could get his grain at a lower rate by doing so?

A. Well, in the first place you are basing it on the assumption that he could get it at a lower rate and there is no evidence that he would get it at a lower rate. I don't know what rate he would get it at. You mean if he buys it at Chicago?

Q. I mean if he gets it at a lower rate.

A. Where is he going to buy it?

Q. Well, let us take first the purchase of grain at Morris. [fol. 877] A. Again he would be subject to a transfer cha-ge at Chicago.

Q. Yes. Now, is that your objection on the part of the grain people, that he is forced to pay a transfer charge?

A. I think I made my position clear that the grain merchant at Indianapolis transacts his business in the same manner that the grain merchant in any other market does. He goes out to the country elevator operator to buy his grain. Now, then, if he has got to go to some barge line location on the Illinois River to get the grain rather than in the territory of the Mississippi Valley I will say that that is not a proper or logical marketing situation.

Q. Now, I heard you say that. I am asking you if your objection to it is that it would involve an elevation or transfer charge at Chicago?

A. That is part of it. At least part of it it is.

Q. Even though the total rate including that elevation charge by water and rail was lower than the all rail rate?

A. Now, you are talking about Indianapolis. Now, let us go further. We have got to take this grain out of Indianapolis. Now, when the grain gets to Chicago and goes into one house you have got one transfer charge and then when it gets to Indianapolis you have got another market charge down there, so you are doubling your charges.

Q. Does that state your objection to the use of that?

A. It states part of them but my general objection is that [fol. 878] it cuts out the opportunity for the Indianapolis grain dealer to engage in exactly the same kind of terminal operation that any other operator performs in going out in the country and competing for the grain.

Q. Now, please tell me why the Indianapolis grain merchant could not go out to Morris and bid in on the basis of the barge——

A. I have answered that question.

Q. Wait until I finish.

A. All right.

Q. On the basis of the barge rate from Morris to Chicago, plus the charge for running the grain through a public elevator in Chicago, plus the reshipping rate beyond. Why couldn't he do that?

A. Where is he going to take it after he gets it to Indianapolis? It don't stop there, you know.

Q. All right. You have got the same transit at Indianapolis that you would have if it came in all rail?

A. Then again you have got to furnish a man to go over there to one elevator on the river to buy all the grain in that territory or else buy it at a Chicago house. I say you are killing all the competition in the country.

Q. It all gets down to the point that even though your Indianapolis merchant could get the grain at a lower charge——

A. I don't admit that he would get it a lower charge and, Mr. Childe, there are so many different angles to this thing. [fol. 879] The grain from Indiana and Ohio, they are the places we always compete with.

Mr. Macaulay: Do you know whether it is a fact that this grain did come from Morris to Indianapolis without going through a Chicago house?

The Witness: I never heard of it.

Mr. Macaulay: That is a fact, four years ago.

The Witness: Well, I have been there about eighteen months.

Exam. Taylor: Are you almost through, Mr. Childe?

Mr. Childe: Pretty soon.

Exam. Taylor: Well, please don't repeat questions.

By Mr. Childe:

Q. You spoke about what you consider to be a Fourth Section violation in the operation of the reshipping rates from Chicago on ex-barge grain to the east?

A. Yes, sir.

Q. Would your answer be the same if instead of corn coming by barge to Chicago we take the committee wheat coming by lake to Chicago?

A. I guess it would have to be.

Q. And would it likewise be the same if instead of the commodity corn moving via the Illinois waterway to Chi-

cago I should take the commodity corn moving from a Lake Michigan port by lake to Chicago?

A. I expect it would but there isn't any corn moving that way.

Q. Are you sure of that?

[fol. 880] A. There hasn't been up until just lately. It is not an ordinary movement to move corn over the lake.

Q. Have you ever heard of the commodity corn moving from Green Bay, Wisconsin by lake to Chicago?

A. Not in any appreciable amount except one year.

Q. Assuming there was such a movement would your answer be the same with reference to alleged Fourth Section violation?

A. Well, I guess to be consistent I would have to say "Yes".

Q. You spoke about producers being harmed by the present rate adjustment because they don't get as good a price as if this proposed rate adjustment went in. Did I understand you correctly?

A. What I intended to convey to you, that the producer in the territory that does not have the benefit of this rate is harmed because if you set the value of this corn at Chicago on a 26 cent rate with no billing back of it but the producer in another territory that is closer to the market has to pay 34½ cents, you have got to bring down the price you pay that producer to meet this situation up here. That is just another problem in arithmetic.

Q. Are you saying that if the proposed rate adjustment goes in the price of corn at Chicago would be lower?

A. I am saying that the rate on rail corn from Chicago would be the same or more.

Q. I am not talking about rate. I am talking about the price.

[fol. 881] Mr. Enoch: I think the witness is going to answer his question.

The Witness: I am assuming that the price of rail corn may be different in Chicago than it is on this barge line corn but it would level off with the prices paid to the producers in other sections and that brings out the very discrimination that I am talking about, that it tends to lower the prices in the other section. There is your public interest.

By Mr. Childe:

Q. You mean that if the price of rail corn goes down in Chicago that a producer in some other section of Illinois that ships by rail to Chicago would get a higher price? I thought you said he would get a lower price.

A. Not ships to Chicago. I am talking about the shipper that ships to Indianapolis from the interior market, where the Chicago corn pays 26 cents regardless of whether it had a prior rail transportation or not and the corn at an intermediate point that hadn't any prior rail transportation pays 34½ and it is nearer to New York.

Q. You said the Indianapolis grain merchant could not compete with the Chicago prices today, did you not?

A. I said that he could not compete unless he lowered the price sufficient in the country to compete with it. That is what I meant. We are selling corn but we are not buying any corn in northern Illinois to sell.

Q. If the Chicago price is not changed how is the [fol. 882] Indianapolis grain dealer going to be better able to compete than he is today?

A. The *The* Chicago corn price on rail corn probably will be changed to the level that the Indianapolis man can probably go out in the country and ship it by rail. If he cannot then he is out.

Q. In that event every producer that ships corn to Chicago under your assumption would get a lower price?

A. Oh, not every producer. I am talking about this territory adjacent to the Illinois waterway. I said every producer shipping to Chicago.

Q. Didn't you say that the rail price on corn shipped to Chicago would drop?

A. No, from the Illinois waterway territory.

Q. Do you mean to say that the Chicago Board of Trade or the Chicago grain dealer would pay a lower price on rail corn which came in from one part of Illinois than he would pay on the rail corn that came from another part?

A. He would probably pay the same prices on rail corn.

Q. Wouldn't the price at Chicago be just the same?

A. The price in Chicago might be the same but the price in the country might vary.

Mr. Childe: That is all.

Exam. Taylor: Any more questions from this witness?

Mr. Oliphant: Mr. Examiner, I understand, if you will

[fol. 883] permit an interruption,—I don't like to insist but I understand there is some more cross examination of this witness.

Exam. Taylor: We will adjourn until nine o'clock tomorrow morning.

(Whereupon, at 10:05 o'clock p. m., the hearing was adjourned until 9:00 o'clock a. m., Thursday, December 21, 1939.)

[fol. 884] Chicago, Illinois,
Thursday, December 21, 1939.

Before R. G. Taylor, Examiner

Hearing Resumed at 9:00 O'clock A. M.

Appearances: As heretofore noted.

Exam. Taylor: All right, gentlemen, let's come to order. Now we will proceed with the cross examination of Mr. Bradford, but we are not going to allow the same question asked over twice from here on out. Proceed.

Any further cross examination of this witness?

FREEMAN BRADFORD, resumed:

Cross-examination (Cont'd.)

By Mr. Root:

Q. Mr. Bradford, you mentioned that the Indianapolis Board of Trade was losing certain business from the Illinois River Valley?

A. I think I said, Mr. Root, that the business that we drew from the Illinois River Valley had practically fallen off to nothing.

Q. That means you are not getting it any more?

A. That means we are not getting it.

Q. Do you know to what market that grain is being shipped?

A. I don't know all the markets, but I know it is coming to [fol. 885] Chicago. They have told me that the grain is moving to Chicago, due to truck movement, waterway movement, and intrastate rates. That is, all three reasons.

Q. And in all probability, it is sold through the Chicago Board of Trade?

A. I don't know who sold it. All I know, it is moving to Chicago.

Mr. Root: That is all.

Exam. Taylor: Mr. Belnap, have you anything?

Mr. Belnap: I have nothing.

Exam. Taylor: Is that all from this witness? Anything on redirect? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Enoch: I guess that is all.

Exam. Taylor: I thought you had somebody else, Mr. Brown.

Off the record.

(Discussion outside the record.)

Mr. Root: Mr. Barclay, please.

WILLARD BARCLAY, was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please, Mr. Barclay?

A. Willard Barclay.

Q. And your residence?

A. Wing, Illinois.

[fol. 886] Q. What is your business or occupation, Mr. Barclay?

A. Grain dealer; manager of the Valley Grain Company at Wing.

Q. You prepared a statement which you would like to make in connection with this matter, in order to expedite the hearing?

A. Well, in a way, yes.

Q. Do you want to make that statement?

A. Yes, I think it would save time.

Q. I would like to get away, if possible.

A. My name is Willard Barclay; age 56. I have been in the grain business for 22 years.

Q. Speak up, Mr. Barclay.

A. I live at Wing, Illinois, Livingston County; have managed the Valley Grain Company there for the last 16 years. Wing is approximately 38 miles from Morris, Illinois.

About four years -go, we began losing our business; itinerant truckers began sapping our business by trucking it out. We are not a stockholder or in any way connected with the Cooperative Allied Grain Dealers Corporation of Morris, Illinois. These itinerant truckers took approximately 25,000 bushels of corn and oats from us for the years of 1937 and 1938, extending into 1939. Self preservation comes first, so we set to work to find a market where we could arrest our competition from the itinerant truckers.

Sometime early in the year 1937, I made a trip to Morris to confer with a Mr. Watt, then manager of the Farmers [fol. 887] National Grain Dealers Corporation. There I learned we could truck our grain to Morris.

By Mr. Enoch:

Q. I can't hear. That you could what?

A. We could truck our grain to Morris to them and meet our competition by itinerant truckers and still get our usual margin for handling grain. By this hook-up, we were not only able to give the producer more money for his grain, but have been able to get most of our lost business back.

We figure the farmer is receiving approximately 1 cent more per bushel for his corn and approximately a cent and a half a bushel more for his beans than we could give him and ship over the rails. We buy over an approximate area of four miles west, two and a half north, two and a half south, and three and a half miles east of Wing. Our yearly business ranges from 200,000 to 250,000 bushels per year, the range caused by seasons and the farmers present farm program of reduction in acreage. All through September, October and November of 1939, we could get approximately 1½ cents a bushel more for beans, 1 cent more a bushel for corn by way of Morris than we could over the rails, which is passed on to the farmer and helped our annual turnover in bushels, in getting our business back.

Now, we have some specific examples set forth here.

Q. (You have got some what?-

A. Some specific examples. On November 29, 1939, we were bid 47 cents net our track for No. 2 yellow corn. Mor-
[fol. 888] ris bid us 48 cents net our station for the same corn.

By Mr. Bradford:

Q. Pardon me, just a minute. That 47 cent bid was from whom?

A. That is the rails, which we could receive from the rails.

[fol. 889] Q. Who did you receive the bid from?

A. Balbach.

Q. That is Chicago?

A. Chicago bids, which was the best we could receive at that time, while Morris gave us a bid of 48 cents net our station, so we were able to buy this corn of Roy Lee, 700 bushels of it, a man who had otherwise been selling by itinerant truckers, and one we had lost previously. The result was we bought this grain and got a reasonable margin on it and brought our business back.

On June 28th, 1939, a man by the name of Frank Gingrich, four miles southeast of Wing, who had been a persistent seller to itinerant truckers, came into our office and made us an offer which was one cent under the rails—or one cent over.

By Mr. Root:

Q. What was that now, one cent under or over?

A. That is one cent over what we could get and pay for it by shipping it over the rails. I called the Co-Operative Allied Grain Dealers at Morris, who gave me at once a bid of a cent and a quarter more.

Q. More than what?

A. More for the corn?

By Mr. Bradford:

Q. That is one and a fourth cents over this one cent, which would make it two and a fourth?

A. Let's clarify that.

[fol. 890] By Mr. Root:

Q. I wish you would.

A. In the first place, we were offered this corn at a cent

a bushel more than I could actually bid if I bought it and put it over the rails and give myself a margin commensurate with the business we have, so I phoned the Co-Operative Allied Grain Company at Morris, who gave me a bid of a cent and a quarter more.

By Exam. Taylor:

Q. More than what?
A. More than the previous bid.
Q. Let me take it this way:
A. Yes.
Q. We will say that your margin was 46 and this man gave you a cent over, that making 47. Did Morris make it 48½?
A. Yes, that would be along the line—I unfortunately haven't put that price down in this particular instance. I have in some that follow. The result was we bought this corn, put it through our plant, got our regular margin and saved that business for ourselves. Now, on June 8th,——

By Mr. Brown:

Q. Just before you go on, when you say you put it through your plant, what did you do with it after you put it through your plant?

Mr. Root: Mr. Brown,—pardon me. Mr. Examiner, don't you believe that is a matter for cross examination?
Mr. Brown: No, but I want to follow along. He said he bought this corn and put it through his plant.
[fol. 891] Exam. Taylor: That is just explanatory of what he meant by it. He can state it.

By Mr. Brown:

Q. Where did you put it through?
A. This particular job, we took the trucks direct to the farmer's crib and hauled it direct to Morris, put it through our books.
Q. You didn't actually put it through your elevator?
A. Not this one.

Mr. Brown: The inference was that you did.
Mr. Root: We are going to develop all that, Mr. Brown. There isn't any secret about that.

Mr. Brown: I know there isn't but we want to understand it.

Exam. Taylor: Proceed.

The Witness: On June 8th, 1939, Matt Lewis, living four and a half miles west of Wing, came into our office and asked the price of white corn.

Mr. Enoch: May I interrupt there. I would like to suggest this: it seems to me that it can be done with much greater propriety if he would tell what the business was and what they finally paid for the grain and let the Commission draw any conclusions that should be drawn from that testimony as to whether they paid more for it or less for it.

Mr. Root: Mr. Enoch, if you want a copy of this man's statement, I will give it to you and it has got that in it.

[fol. 892] Mr. Enoch: Then we are just wasting time with the forepart of it.

By Exam. Taylor:

Q. Can't you line your testimony up——

A. That last one in regard to Frank Gingrich is the only one I haven't the prices set down. The rest have them.

Exam. Taylor: All right, proceed.

The Witness: Asked us the price on white corn. We bid him fifty and a half cents per bushel and explained we would bring the trucks to his farm and save the cost of transportation to Wing, which would save him a cost of a cent a bushel. This man had been selling to itinerant truckers. We bought this corn for one cent per bushel more than he was otherwise bid, on top of saving him one cent per bushel for the transportation into Wing.

Mr. Enoch: I move to strike that out because I don't this this witness is in a position to tell all the bids that this other man got.

Mr. Root: I didn't hear that objection.

Exam. Taylor: You can cross examine him on that, Mr. Enoch, when you come to it.

Mr. Enoch: It is all in the record.

The Witness: I can correct that now. That man was paid forty-nine and a half when he came into my office.

Exam. Taylor: Proceed.

The Witness: This man had 2081 bushels of white corn.

[fol. 893] The result was, we bought this corn, got us our margin, our regular margin, saved the business. Mr.

Lewis got a cent a bushel more for his corn and saved him the cost of transportation to Wing in this transaction.

On November 20th, 1939, Gordon Wrey, living three miles northeast of Wing, who had frequently sold to outside bidders, truckers, came into our office and stated he could get 42 cents for his corn. Upon phoning to the Co-Operative Allied Grain Dealers Corporation at Morris, we were able to give him 43 cents for it, take the trucks to his farm, save him the cost of transportation to the elevator. The result was we bought 1,704 bushels which would otherwise be straying away from us.

By Exam. Taylor:

Q. You said the cost of grain to the elevator. Which elevator were you talking about?

A. Well, it usually costs—it costs approximately, in our area, three quarters of a cent to truck grain into our plant.

Q. Was that trucked into your plant?

A. No.

Q. It went right to Morris?

A. It was taken directly to Morris by trucks from the farm.

Q. Proceed.

A. We firmly believe that the market at Morris has not only saved money for our clients but it has enabled us to build up our business and recover a large portion of that which had strayed away from us in previous years. That is all .

[fol. 894] Q. Is that all you have?

A. Yes, sir.

Exam. Taylor: Any questions?

By Mr. Root:

Q. You have a statement in your example of November 20th, 1939.

Exam. Taylor: He gave that, I think. That was the last one he gave.

The Witness: That was the last one.

By Mr. Root:

Q. You missed the one on Larkin Pool on October 28th, didn't you?

A. Yes.

Q. Do you care to give that to the record?

A. Well, there was an objection made here.

Q. All right, you proceed on it.

A. All right. A man travelling through the country offered Larkin Pool a cent and a half a bushel more for his beans than I could give and put them over the rails.

Mr. Enoch: I think that kind of testimony ought not to be received. Obviously, it is based on what somebody told this witness.

Mr. Belnap: Mr. Examiner, on the respondent's side of the case, all day yesterday we had people testify that Morris bid more, half a cent to a cent and we didn't object to that.

Mr. Enoch: I don't believe you heard my objection here. I don't believe we ought to receive a lot of this type of [fol. 895] hearsay testimony.

Mr. Belnap: If that is hearsay, we have been receiving hearsay. If the man said he had a bid——

Mr. Enoch: Mr. Belnap does not understand, apparently he didn't hear this man's statement. He isn't talking very loud. The man said somebody else was bid so much for grain. Unless he is following that man around twenty four hours a day for months at a time, he isn't going to know how much that man was bid for grain except what that man told him. That is my objection.

Exam. Taylor: In any event, Mr. Belnap, you know that if there is an objection to hearsay evidence, we sustain the objection.

Mr. Belnap: That is correct, sir, but you have a man in the grain business who is competing in the purchase of grain, who is telling that from a particular producer, he was able to offer a certain amount, dependent upon whether he shipped to the river or to the rail. Now, it is his business to find out what his competition is, how much he has to bid. I think that would be perfectly proper to have it.

Exam. Taylor: If he puts it in the form you state it, that would be all right; but he didn't put it that way.

Mr. Belnap: I understood that was the way he was putting it in.

Exam. Taylor: Maybe you can straighten him out on it.

[fol. 896] By Mr. Root:

Q. Mr. Barclay, how much did Larkin Pool offer to sell you that corn with relation to your rail bid?

A. It was beans, Mr. Root.

Q. Or beans, with relation to the rail bid that you had had on beans that day?

A. We had a bid on the board that was approximately one and a half under, which was a rail bid.

Q. And his was a cent and a half over, is that right?

A. Yes, sir.

Q. Well, just proceed and tell what happened in the Larkin Pool deal from that point.

A. Well, we hated to lose this business because it had been going to an itinerant trucker and an itinerant trucker had made this bid. I called the Co-Operative Allied Grain Dealers Association of Morris and received a bid whereby I could beat that competition, and they sold me the beans in preference to selling them to the itinerant trucker, as a result. I forget how many bushels we received.

Q. 1,900 bushels, is that it?

A. 1,900 bushels.

Q. Now, on or about October 18, 1939, did you have a transaction with one Ed Hunt down there?

A. That is Ed Haab, H-a-a-b.

Q. Whoever it was?

A. I did.

[fol. 897] Mr. Enoch: Is that the same day, October 29th?

Mr. Root: No, October 11th.

Mr. Enoch: 11th. Pardon me.

By Mr. Root:

Q. Will you describe that transaction.

A. He came into my office and stated he could receive one cent per bushel more than I had marked on the board for corn, which was a rail bid. I called up Co-Operative Allied Grain Dealers of Morris and promptly received a bid whereby I could buy that corn by giving him one cent more than I was bidding, which was a rail bid.

By Exam. Taylor:

Q. What was the amount of the bid, do you recall?

A. I can't recall that bid, sir.

By Mr. Root:

Q. Do you have that figure with you?

A. I didn't know it was going to be this technical or it could have been put down. No.

Q. What was that bid with relation to the rail bid?

A. Well, the bid I finally made him in order to buy the corn was one cent more than we could bid going over the rails and still retain our margin of profit.

Q. Now, in that case were you also able to save Mr. Hunt, whatever his name is——

A. Haab, H-a-a-b.

Q. Haab?

A. Haab.

[fol. 898] Q. The expense of a—some expense of hauling on his corn?

A. Eight-tenths cents on a bushel or 80 cents a hundred it cost him to transport it into our plant at Wing.

Q. So the net benefit to him was 1.8 cents per bushel more than he would have had over the rail?

By Exam. Taylor:

Q. But you didn't take it into your plant?

A. No, we took the trucks direct to——

Q. What saving was there in that?

A. He didn't have to transport it to Wing. I paid the transportation.

Q. You said it was 80 cents a hundred to your plant at Wing. What would it be to the plant at Morris?

Mr. Root: Pardon me, Mr. Examiner; let me ask this question:

By Mr. Root:

Q. Are all of your bids F. O. B. the farm?

A. No, it is F. O. B. Wing, on track, Chicago.

Q. Pardon me, the bids you put out like when you bid this man for this particular job lot, where was this bid made, on his farm or in Wing or Morris or where?

A. In the conversation, I told him that if I was able to buy it and sell it to Morris, I could bring the trucks directly to his farm, take his corn direct to Morris, which would save him the cost of transportation into our plant or any other plant.

Q. As far as he was concerned, the bid was on his farm and he didn't have to move the corn at all, is that correct?
[fol. 899] A. Yes, that is true.
Q. Now, Mr. Barclay, have you had other transactions similar to the ones that you specifically mention here?
A. Too numerous to mention.

Mr. Enoch: Similar to which one?
Mr. Root: To these several specific examples.
Mr. Enoch: Are these all similar?
Mr. Root: Well, yes, sure, they are all similar.
Mr. Bradford: Now, just a minute, Mr. Examiner. I don't think they are similar because some of these examples were where he had been selling and got bids from itinerant truckers and others were rail shipments. I don't think they are similar.
Exam. Taylor: That will be a matter for the Commission and argument.

By Mr. Root:

Q. Mr. Barclay, let me ask you just one question: on this grain which you shipped to Morris, what is the reason that you have had it trucked to Morris and shipped by water rather than shipping it out of Wing by rail?
A. Well, there is two reasons. In the first instance, the average farmer in our community hires his corn trucked to our plant, which averages 75 cents a hundred bushels from all the territory we draw. Some is less——
Q. That is, when it comes into your plant in Wing, it is 75 cents?
A. Yes. Now, we are able to hire this corn trucked to [fol. 900] Morris and take these trucks directly to a farmer's crib and direct to Morris, saving him that cost of transportation.

By Mr. Day:

Q. What is that cost? That is what the Examiner asked you.
The Witness: Do you want to know that cost?
Exam. Taylor: I do.
The Witness: It averages two and a half cents a bushel at my house from Wing to Morris.

By Exam. Taylor:

Q. From Wing to Morris?
A. Yes, sir.

By Mr. Day:

Q. Or from the farm to Morris?
A. To Wing and vicinity. Whenever they come to my plant with grain; it might be south, it might be east, it might be west or north. The rate I pay is two and a half cents a bushel.

By Mr. Day:

Q. From the farm to Morris?
A. Yes, sir. Two and a half cents a bushel.

Exam. Taylor: Is that all?
Mr. Root: No, I believe he has answered only half of that question.

By Mr. Root:

Q. My question was, why have you sold grain to this Co-Operative Allied Grain Dealers Corporation at Morris and trucked it in in preference to rail? You said there were two reasons and you gave one reason.
A. The last reason is the most important. I can get more money for it.
[fol. 901] Q. More money for the grain you sell?
A. Yes, sir.

Mr. Root: That is all.
Exam. Taylor: Any questions by counsel for protestants? (No response.) Cross-examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Barclay, is it your impression that something we are trying to do now will definitely affect the price that you will be able to get for your produce sold at Morris and move it up the waterway to Chicago?
Mr. Belnap: May I have that read? The phone rang right in the middle of it.

(Question read.)

The Witness: Well, I will answer you a good deal like Mr. Hayes did last night. This rate question is a lot of stuff that I don't——

Mr. Belnap: I can't hear the witness, please.

The Witness: I say I am going to answer this gentleman like a witness did last night. The rate question to me is—I don't understand it. I don't know much about it. I do know that when I can get a bid from a broker by rails and when I get a bid from the Co-Operative Allied Grain Dealers Association at Morris or waterway; if it is more money, I accept it.

By Mr. Cole:

Q. And Mr. Barclay, if in the future, no matter what we do, if in the future you would still have available that [fol. 902] waterway—because we don't threaten to dry it up—and transportation over that waterway was still cheaper, and if the Morris elevator is still in operation and if you can still sell your grain down at the Morris elevator and make some use of that cheaper transportation via water, what do you see in this situation that you fear sufficiently to come here and tell us of your worries? What is it that you fear?

A. I haven't any fears.

Mr. Belnap: Mr. Examiner, may I make an objection?

Exam. Taylor: Yes.

Mr. Belnap: This witness, to my mind, is a normal function witness coming here, presenting facts. I don't understand he has presented argument as to what will follow or what won't follow anything; and your asking him to argue about anything is clearly beyond the limitations of his direct examination, and I object to that type of question.

Mr. Cole: Mr. Examiner, all I have asked this witness for is what is the fear in the back of his mind, why is he——

Exam. Taylor: We won't argue about it. The witness may answer if he knows.

Mr. Cole: Thank you.

The Witness: I am just answering on past performance. I have no idea what is in the future here as a result of this hearing.

By Mr. Cole:

Q. Do you understand the issue as that we are here con-
[fol. 903] fronted with?
A. I am not sure that I do.

Mr. Cole: That is all. Thank you, Mr. Barclay.

By Mr. Day:

Q. You said that you make more money when you are able to arrange the sale of grain from the farm to the elevator at Morris. What is your commission in the case of that kind?
A. Well, we try to get 2 cents a bushel for our commission.
Q. And what do you get where you handle it through your own elevator?

Mr. Root: Will you repeat that question, please?

(Question read.)

The Witness: If we have to meet the competition which we have been up against, oftentimes we didn't get a cent a bushel.

By Mr. Day:

Q. Now, what is the answer? What are you currently getting where you handle corn through your own elevator and it is moved out by rail?

Mr. Belnap: I can't hear Mr. Day, Mr. Examiner. May I have that question read?
Mr. Day: Mr. Examiner—off the record.
Exam. Taylor: Yes, off the record.

(Discussion outside the record.)

The Witness: I haven't handled very much corn through our plant for quite a while, since——

[fol. 904] By Mr. Day:

Q. How long?
A. Oh, it is all fall; ever since—well, we will say early July. I have put practically everything to the waterway at Morris.
Q. You haven't handled anything through your elevator?
A. We handled some oats.

Q. But no corn?

A. Very—possibly two cars.

Q. How long ago?

A. I would have to look at my records for that; in that interim.

Q. In these two cars of corn that you have handled since July, what did you get on those as your compensation?

A. Now, I would have to go to my records and see. Now, understand, the collection of those two cars was the odds and ends of full truck loads to Morris that was brought into the plant at Wing; say 50 bushels or over.

Q. It wasn't a carload shipment?

A. It was a collection, after we collect up a thousand bushels or better.

Q. Can you tell us what you got on that thousand bushels?

A. I can't without going to my records. There is a variation of prices.

Q. What is the variation?

A. Some of this corn was bought as low as 40 cents and some of it was bought as high as 46, 47. It is the odds [fol. 905] and ends of those bushels.

Q. I know that has been approximately the range of prices since early summer, but what I am trying to find out from you is, what did you get out of it?

A. I can't tell you without going to the books.

Q. You said there has been a variation. Can you tell us the range of that variation?

A. I have explained that it was maybe the first job we bought that went to Morris, we had 50 bushels over that come into the plant.

Q. You told me what you got that went to Morris.

Mr. Root: He is explaining it. Let him answer.

By Mr. Day:

Q. Let's stick to this business that you handle in your own elevator and is shipped out by rail, because, as I understand it, your elevator is simply a rail facility?

A. Yes.

Mr. Root: Let him explain.

Mr. Day: I don't want him to explain anything about the barge grain. I have got the answer on that. My question deals with the grain handled through his elevator. He

doesn't have to spar with me about that and he doesn't need any help from you. Just answer the question.

Exam. Taylor: Mr. Root, Mr. Day has the witness on cross-examination.

The Witness: Inasmuch as that is odds and ends, it [fol. 905a] might be bought all the way from 40 to 47, and when the accumulation reached a carload, the possibilities are I got a pretty fair margin on that.

By Mr. Day:

Q. How much?
A. I couldn't say.
Q. Was it a cent?
A. I couldn't say without going to my records.
Q. Was it three cents?
[fol. 906] A. If we could have taken it to the river at the time, we would have taken it there, because we make a practice of selling as soon as we buy. We are not gamblers on grain.
Q. Was it 3 cents?
A. I couldn't say.
Q. You couldn't say?
A. No.
Q. Then why did you make the positive statement on direct that you were getting more where it was handled through the river when you don't know what you get when it was handled through your elevator by rail?
A. These are all daily transactions that involve carload lots.
Q. What is the answer, do you get less or more?
A. I couldn't tell you without my records.
Q. You don't know?
A. I couldn't tell you without going through my records.

Mr. Belnap: I can't hear the witness.
The Witness: I haven't those records with me.

By Mr. Day:

Q. You want to change your previous answer, then, that you get more where it is barged?
A. No, I don't want to change that answer.
Q. You still want it to stand that you got more?
A. On daily business bids, we get more to Morris.

Q. What do you get on daily business bids where it is handled through your elevator?

[fol. 907] A. We haven't done any of the business for so long. We sell practically everything to Morris, which probably you will get some information on later.

Q. Is your elevator standing idle now?

A. Not exactly. We are in the grain and lumber and coal business.

Q. I know, but you don't put coal and lumber through your elevator?

A. Oh, no.

Mr. Day: The answer is "no," Miss Reporter. He is shaking his head.

The Witness: We handle some oats through that plant.

By Mr. Day:

Q. How much?

A. Well, up to the present time, from our fiscal year, which began July 1st, approximately 13,000 bushels.

Q. How much since July?

A. I said July 1st, which is the beginning of our fiscal year, up to the present time.

Q. Was that this year's crop of oats?

A. Most of them were, yes.

Q. Most of it was?

A. Yes.

Q. Do you know what you got on the oats when you handled it?

A. Our aim was to get two cents a bushel.

Q. The same as on the barge grain?

[fol. 908] A. We seldom sell oats to the river; beans and corn.

Q. Isn't oats desirable to the river handlers?

A. Our bids are not so good on oats.

Q. That is because oats are bulky and only weigh 32 pounds to the bushel, isn't it?

A. That I am unable to say. I don't know how they base their bids.

Q. But it is all right for the railroads to handle this commodity that isn't so favorable from a transportation standpoint?

Mr. Belnap: I object to that. He hasn't said anything was favorable from a transportation standpoint, Mr. Examiner.

By Mr. Day:

Q. Is it a fact that oats weigh 32 pounds to the bushel?

A. Yes, sir.

Q. Isn't it a fact that corn weighs from 56 to 72 pounds per bushel?

A. I believe the standard weight is 56.

Q. Is it 72 pounds for ear corn?

A. We don't handle ear corn. It should be 70 at this time of the year.

Q. 70?

A. At this time of the year.

Q. Where did these itinerant truckers that you spoke about haul the grain to?

A. Well, they would come in there from Ohio.

[fol. 909] Q. I don't want to know where they come from. I want to know where they haul it to. Don't spar with me and don't try to evade my questions. That is a clear question and you can answer it plainly. Where does the grain go to when they get it?

A. I don't know because I don't sell to them.

Q. You don't know?

A. I don't sell to them.

Q. Now, this man that was able to sell 22,000-odd bushels of corn off his farm, how big a farm has he got?

A. I never made that statement.

Mr. Root: 2,200 not 22,000.

Mr. Day: I understood him to say 22,000.

By Mr. Day:

Q. You said 2,200?

A. I don't think that is the statement.

Q. Well, what is it? What is the statement?

Mr. Root: Which one are you asking about now?

The Witness: Which one? There is a number of examples.

By Mr. Day:

Q. The gentleman's name was Lewis, if that helps you any.

A. Matt Lewis.

Mr. Root: 2,081.

Mr. Day: Just a moment, please; let's have it from the witness. If he wants any prompting from you, I suppose he will ask you.

Mr. Belnap: Have we an entire change in deal, Mr. Examiner?

[fol. 910] I heard all that yesterday; Mr. Day and Mr. Enoch and Mr. Brown getting up and making statements.

By Mr. Day:

Q. Now, will you consult your memorandum and tell us what the figure was? You say you don't think it was 2,200-odd bushels.

A. You said 22,000.

Q. I said that, then someone over here said 2,200 and you said you didn't think that was the figure.

A. It isn't. It is 2,081 bushels.

Q. 2,081?

A. Yes, sir.

Q. Is Mr. Lewis actually a grower of corn?

A. Yes, sir, farmer.

Q. Are all of these other parties from whom you purchased the corn for the canal operators also farmers—are they all farmers?

A. Yes, sir.

Mr. Root: May I have that question?

Exam. Taylor: Read the question, Miss Reporter, please.

(Question read.)

By Mr. Day:

Q. Are they engaged in any other business, like selling grain?

A. Not that I know of.

Q. As far as you know, they are engaged exclusively in farming?

A. Yes, sir.

[fol. 911] Q. Now, when you arrange for the hauling of corn by truck from these farms to the river, do you use your own trucks?

A. No, sir.

Q. You hire that done?

A. We hire it done.

Q. Truckers around Wing?

A. We have men who own fleets of trucks that do that business exclusively, practically.

Exam. Taylor: Mr. Witness, everybody in the room wants to hear you; we all want to hear you. I am sure you can talk up a little louder than that.

By Mr. Day:

Q. Are these people operating trucks engaged in the trucking business?

A. Yes, sir.

Q. Not in the grain business, or not in any side lines?

A. The men I use are exclusively in the trucking business.

Q. What is their name?

A. One of them is Carl Dickson.

Q. At Wing?

A. He is from Saunemin. Then we have George Stacey of Dwight that we use, and we have another firm up there that has a number of trucks, by the name of Niesen.

Q. They do substantially all of your hauling?

A. Yes, sir.

Q. And you arrange for that transportation from the [fol. 912] farm to the river?

A. Yes, sir.

Q. Do these same haulers take the grain—would they take the grain in from the farm to your elevator in the event that you saw fit to move it through your own elevator?

A. Yes, sir, but I would have to pay them.

Mr. Root: What was that answer? I didn't hear it.

(Answer read.)

Mr. Day: That is all I have, thank you.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. On this grain that moved from the farm to the river elevator at Morris, do you buy the grain from the farmer and sell it to the Allied Co-operative, or do you simply conduct that business for the Allied Co-operative at Morris?

A. I buy that for the Valley Grain Company and sell it to the Co-operative Allied Grain Company at Morris.

Q. So you pay the transportation cost from the farm to the river elevator?

A. Yes, sir.

Q. And your dealings in respect to the transportation of that grain by truck are conducted in your behalf?

A. Yes, sir.

Q. Do you get any bids from those river elevators for oats?

Mr. Root: I didn't hear that last word.

By Mr. Enoch:

Q. Do you get any bids from those river elevators for [fol. 913] oats?

A. Yes, sir.

Q. Have you had any since the 1st of July?

A. Every day, practically.

Q. From the Allied Co-operative?

A. Yes, sir.

Q. Could you give me any of those bids and the time they were made?

A. I don't recall—let me tell you one of the reasons why I don't put oats up to the Co-operative Allied Grain Dealers.

Q. Why not?

A. Our oats this year are of a very bad quality. Sometimes they will come in there, two loads that will weigh 26 pounds and they will be musty, and the next two loads will be 28, 29 pounds, dark and musty, and those oats really have no grade, so we consign them to Chicago and let them sell on the merits. That is one of the reasons.

Q. What was the quality of oats last year in the territory?

A. Very good.

Q. Did you sell them to the Allied last year?

A. No.

Q. Why was that?

Mr. Day: He shakes his head; the reporter doesn't hear that.

The Witness: Well, their bids are not so good on oats.

[fol. 914] By Mr. Enoch:

Q. They are not as good as the rail bid?

A. No.

Q. You are on the Wabash?

A. Yes, sir.

Q. Do you think that railroad ought to continue to handle oats out of Wing and let the barge take the corn?

A. Well, that is up to them.

Q. Do your oats find their natural market in Chicago?

A. I have no way of telling what happens to them.

Q. To whom do you sell oats?

A. The oats have principally been sold to Paul Balbach at Pontiac. He runs Winthrop-Mitchells.

Q. Do they move by rail to Chicago?

A. Yes.

Q. Then Chicago is the market as far as you are concerned and as far as you know, is it not?

By Exam. Taylor:

Q. Did you answer that?

A. It would be on oats, but it isn't as good a market as corn—on corn.

By Mr. Enoch:

Q. Now, take your paper that you had in front of you on direct and refer to the date of November 2nd, where you bought some corn, and tell me in cents per bushel how much you paid for that corn and to whom.

A. I don't think I made any testimony along that line.

Q. Have you got the date? Is the date right, November [fol. 915] 2nd? The first date you gave; first transaction.

A. This is November 29th.

Q. November 29th. All right. How much did you pay for that grain and to whom? Can you give me the cents per bushel?

A. This particular job, we paid 46 cents.

Q. 46 cents. To whom?

A. Just a minute until I see. This was a Morris bid, Roy Lee.

Q. Roy Lee?

A. Just a minute, now, Yes, Roy Lee.

Q. Was that net to him on the farm?

A. Yes, sir.
Q. He bore no transportation cost on that?
A. No, sir.
Q. Now, on June 28, 1939, is that the next date?
A. Yes, sir.
Q. How much did you pay for the corn on that day and to whom did you pay it?
Mr. Root: I beg your pardon; would you read that question for me? The telephone rang.

(Question read.)

Mr. Root: On what day?
The Witness: I haven't that price set down in here and it is the only one that I don't have.

By Mr. Enoch:

Q. June 8, 1939. Can you give me the same information for that date?
[fol. 916] A. We paid the farmer 50½ cents per bushel for No. 2 white corn.
Q. Two——
A. 2 White corn.
Q. What was the quality of this corn you paid 46 cents a bushel?
A. That was No. 2 yellow corn. You understand that white corn is selling at quite a premium over yellow and has been for some time.
Q. Now, on June 8th, is that the next date?

Mr. Belnap: That is the one you just got.
The Witness: Just got.

By Mr. Enoch:

Q. All right, November 20th.
A. We paid Gordon Wrey 43 cents for 2 yellow corn.
Q. October 28th, that was soy beans, wasn't it?
A. I think it was soy beans.
Q. And the transaction on October 11th, was that corn?
A. That was 2 yellow corn.
Q. 2 yellow corn?
A. 2 yellow corn.
Q. How much did you pay for that and to whom?

A. Why, I will have to go to my records, but it was 1 cent more than the rail bid.

Q. You are going to get that in there in any event?

A. If I had known this was going to be this technical, I would have brought that with me.

[fol. 917] Q. When you say "rail bid," you mean bids put out to you from Chicago?

A. Usually by brokerage houses from Pontiac who operate for Chicago houses or Mr. Staley at Decatur.

Q. Are all of these bids that you are talking about here, describing as rail bids, bids from someone at Pontiac?

A. Well, there is one comes from Fairbury—Farrell Brothers.

Q. Where is that?

A. That is a Chicago house.

Q. Does that bid come from Chicago?

A. It is through Mr. Vorheis at Fairbury, who acts as their broker.

Q. These bids that you get and describe as rail bids have come from somebody located at Pontiac, at Fairbury?

A. Brokers at Fairbury.

Q. Are they located at those points?

A. Yes, sir.

Mr. Root: Mr. Examiner, I can probably explain this whole thing and save a lot of time.

Exam. Taylor: Counsel wants to cross examine.

Mr. Root: Go ahead.

By Mr. Enoch:

Q. Are all of these transactions here with respect to prices, prices to these farmers on the farm and in no instance had anything to do with the cost of transporting from the farm to the elevator?

[fol. 918] A. We have a rail bid and we have a Morris bid, which includes the transportation from the farm.

Q. I am talking about these different transactions, beginning on November 29th.

A. The transactions where we received bids from brokers would be for corn, over the rails.

Q. I asked you in connection with the transaction on November 29th, whether or not this 46 cents that you paid

to that farmer was net to him on the farm. You said yes.

A. November 29th?

Q. Yes. What was the situation in respect to each of the other transactions about which I inquired?

A. All of these examples given here are for either corn or beans, which was hauled to the river.

Mr. Enoch: That is all I have.

Exam. Taylor: Mr. Brown.

By Mr. Brown:

Q. Mr. Barclay, you have used the term "going over the rails." Now, what destinations did you refer to?

A. Well, we usually — that term in respect to the best bid we can receive for grain that is to be shipped over the rails. It might be for Decatur or Chicago, which is our two principal markets.

Q. It might be St. Louis on those?

A. St. Louis is not very good for us on oats; hasn't been for a long time.

[fol. 919] Q. When you said "going over the rails," it was to a market like——

A. Terminal market on the rails.

Q. Chicago, or Decatur, or some place like that?

A. Yes, sir.

Q. When you ship by rail, do you make a contract with the railroad and get a bill of lading indicating what the service will be over the rails to the point of destination?

A. After we have paid our freight bill we do, yes.

Q. Do you pay your freight bill at the time you get the bill of lading?

A. No, that is deducted from the grain after it is unloaded and made up in the account sales in the regular form.

Q. But the railroad collects its money at the destination?

A. Yes, sir.

Q. Under your rail shipments. Now, these bids that you get from Allied, do you mean the Co-operative Allied Grain Dealers Corporation at Morris, Illinois?

A. That is the style of your firm, is it not? Yes, sir.

Q. Is the Allied Company the only one located at Morris or Seneca or anywhere along the river that gives you bids?

A. That is our nearest point in the way of transportation.

Q. Do you get bids from any other river barge besides the Allied?

A. No.

[fol. 920] Q. When you get a bid from the Allied for either corn or beans, does that require you, if you accept it, to deliver the corn or the beans at the waterfront elevator for that price?

A. Yes, sir.

Q. Then the price that the Allied bids you for delivery at Morris is not the price that you pay the farmer, is it?

A. Oh, no. I have to have something out of it, and I have to pay this transportation.

Q. But you talked about the usual margin. You mentioned that, one of the first things you said. Now, what is your usual margin, if you care to give it?

A. Our aim is to get 2 cents a bushel.

Q. And when you were putting corn through your elevator, was that 2 cents a bushel your usual profit for handling, paying your expenses?

A. Yes, sir, that is what we have to get.

Q. Is that about what you are getting now?

A. That is about what we are getting now.

Q. Have you a rail rate to Chicago on corn which is less than your rate to Chicago on other grain?

A. Yes, we have a so-called lake rate of 10 cents.

Q. Were you along with the others for some months prior to last April requesting the railroads to give you a reduced rate on corn?

A. We did, but we asked for a much lower rate than that.

[fol. 921] Q. What is your rate now?

A. It is 10 cents.

Q. What did you ask for?

A. Seven.

Q. Would that have enabled you to still go over the rails?

A. That would have gone a long ways.

Q. What?

A. It would have gone a long ways towards stopping it.

Q. If it wouldn't move over the rails, why did you ask for 7 and get 10?

Mr. Belnap: Just a minute.

Mr. Brown: He said he asked for 7 and he got 10 and he only used the reduced rate he got on the Wabash Railroad on two cars.

The Witness: I would like to ask you one, Mr. Brown.

Mr. Brown: How?

The Witness: I would like to ask you one.

Mr. Brown: You can't do it now. I will take you outside afterwards, if you want to.

The Witness: All right, I will accept the challenge.

By Mr. Brown:

Q. When you accept a bid from the Allied which requires you to deliver to their elevator at Morris and you get your money, are you through with that transaction? Is it concluded so far as you are concerned?

A. Well, usually after we get the business, we pay this [fol. 922] truckman off.

Q. I am not talking about that. You get a bid from Allied for delivery of corn at their elevator. You accept that bid and you deliver the corn. You get your money from the Allied for the corn?

A. Yes, sir.

Q. Are you through with that particular transaction when you get your money?

A. I hope——

Q. As far as your relations with the Allied are concerned?

A. I hope I am.

Q. Then how do you know what happens to that corn after it gets into the possession of the Allied?

A. That is out of my line. I don't know.

Q. All right. You mentioned several truckers located in your own town and nearby. Are they also these itinerant truckers you talk about?

A. No, sir.

Q. Did those truckers, to your knowledge ever truck grain for you or anybody else to Chicago?

A. Well, I can't say about those people who live in Dwight. I don't believe that Carl Dickson trucks it to Chicago. I never heard of it.

Q. Did you ever sell grain to an itinerant trucker or any other kind of a trucker when you knew the grain was going to Chicago?

[fol. 922a] A. I never did sell to an itinerant trucker. I have no use for them.

Q. What is the capacity of your elevator?

A. Approximately 40,000 bushels.

Q. How long has it been in existence?

A. Well, that is something I can't answer. I rebuilt the workhouse in 1923, but at that time there were four concrete tanks with approximately 30,000 that were intact from a previous fire, which we added the workhouse to.

Q. The workhouse didn't increase the capacity, did it?

A. Oh, yes, the four tanks approximate 30,000 and the wooden workhouse, which is steel clad, is approximately 10,000.

Q. And when was that improvement completed?

A. 1923.

Q. That was long before you began selling grain to the barge?

A. Oh, yes.

Q. And that improvement now, I understand, is partially idle?

A. We use it for oats and we have got some Government corn stored in it.

Q. You haven't any control over the shipping of the Government corn, have you?

A. No, sir.

Q. Have you sold any soy beans to go to Chicago by rail?

A. Not recently.

Q. Have you watched the prices, Chicago prices for soy [fol. 923] beans in the last two months?

A. Yes, sir.

Q. Did they fluctuate widely from day to day?

A. Yesterday and the day before.

Q. I am talking about from day to day during the last few months beginning with October.

A. Yes, they did.

Q. Did the bids at Morris for soy beans fluctuate in the same way as the Chicago prices?

A. They fluctuate largely on the option market, Mr. Brown.

Q. Now, I want to get this clear. I understand that all the grain that you deliver at Morris you contract for at the farm, taking possession at the farm and delivering yourself either by—for your own account by other truckers at Morris?

A. Yes.

Q. And it doesn't go through your elevator at all; grain does not?

A. I will have to qualify that. If it happened to be 30, 35 or 50 bushels left over, we will take our truck and haul it over to the plant.

Q. Then you get an aggregation of these small amounts?

A. An aggregation. If we can get a thousand pounds——

Q. Then you ship that over the rails?

A. I think I have done that in two instances, and then there is other instances I have hauled it out of the elevator to Morris.

[fol. 924] Q. That is what I want to bring out. You not only have grain hauled for your account from the farm to Morris, but when you accumulate a small amount, say a thousand pounds at your elevator, you may not always ship it by rail but sometimes have it trucked over to Morris, is that right?

A. Well, that depends on what we think of the market.

Q. But do one of the two things?

A. Yes.

Q. And that is trucked over for your account when it is to go to Morris, trucked over for your account by somebody else?

A. Yes, sir.

Q. Would you say that figures two and a half cents for trucking from your elevator the same as you do from the farm?

A. Yes, 2½ cents applies to all my surrounding territory or the territory that draws to me.

Q. Are you a stockholder in Allied?

A. No, sir.

Mr. Brown: That is all.

Mr. Bradford: I have some questions.

Exam. Taylor: Mr. Bradford.

By Mr. Bradford:

Q. Mr. Barclay, I would like to inquire about this itinerant trucker you are talking about. Did he buy considerable grain from the farmers in your territory, on the farm?

A. I think in 1937 and 1938, before we found this new market, it took around 20,000 bushels each year, as near as [fol. 925] we could get at it.

Q. I believe in connection with this transaction from Lewis, you said that you received bids from Morris that

permitted you to pay 1 cent per bushel more than the itinerant trucker was paying, is that it?

A. It was at that time, that is the reason they got the job.

Q. And you also made the statement, in addition to giving him 1 cent, you saved him approximately 1 cent, that is, the producer, in the cost of transporting the grain from his farm to your elevator, is that correct?

A. I think the direct testimony, Mr. Bradford, shows that this man had sold to itinerant truckers occasionally and we were trying to bring him back to ours.

Q. You can answer my question. You did say that you saved the man the cost of transportation from the country to your elevator because you paid the transportation charge to Morris, is that correct?

A. That would be a saving to him, yes.

Q. Now, if the itinerant trucker took the grain on the farm with his truck from the farmer, wouldn't that farmer be up against a transportation charge from his farm to any place?

A. Now, what kind of a deal he had there, I don't know. I do know this, Mr. Bradford. I bought that grain because I paid more for it and went to the farm for it.

Q. You made the statement that you paid 1 cent more [fol. 926] than the trucker and you, in addition, saved the producer 1 cent in the transportation charge. Now, if the itinerant trucker took the grain on the farm, I would like to have you explain where you saved him 1 cent transportation charge from the farm to the elevator.

A. I think you have misunderstood this direct testimony, haven't you?

Q. If I did, I wrote it down wrong. I heard you say you saved him in addition 1 cent in the transportation.

A. Do you want me to read it again to you?

Q. I would be glad to have you, if I am mistaken, I would like to have it cleared up.

A. June 8th, 1939, Matt Lewis, four and a half miles west of Wing, came into our office and asked our prices on whitcorn. We promptly bid him 50½ cents per bushel and we explained we would bring the trucks to his farm and save him the cost of transportation to Wing, which would cost him 1 cent per bushel. We further added down there, this man had been selling to itinerant truckers occasionally.

Q. Now, on that portion of the business of the itinerant trucker, would he have been compelled to pay any transportation charge from the farm to any place, when the itinerant trucker took delivery of the corn on the farm?

A. Well, I don't suppose he would, but in this case we bought that corn and brought it back into our business.

[fol. 927] Q. On that corn, you didn't pay him 1 cent more and in addition save him one cent in transportation?

Mr. Root: I object to that. There is no evidence of what the itinerant trucker would have paid.

Mr. Bradford: Mr. Examiner, the statement of the witness was that he paid 1 cent more——

Exam. Taylor: The record will show what he said, and his reply this time will show what he said now.

Mr. Bradford: That is all I have.

Exam. Taylor: Any further cross-examination of this witness?

Mr. Enoch: I would like to be permitted to ask one more question, because an answer of this witness to Mr. Brown is somewhat contrary from what I understand the facts to be and I would like to inquire about it.

By Mr. Enoch:

Q. Do you ever get any account sales from Chicago in connection with this water-borne traffic that you sell to the concerns at Morris?

A. We don't get no account sales from Chicago, no.

Q. Do you get any account sales from anybody?

A. We do. We get the account sales from their office at Morris, and I want to add something else there. I don't pay any weighing or inspection. That is something else that is a saving to me over the Chicago.

Q. Over the Chicago?

[fol. 928] A. Yes, sir.

Q. You haven't got a copy of one of the documents, have you?

A. No, I haven't.

Q. Whose account was that, who was rendering an account to you on this? Some house at Chicago or the Allied Co-operative?

A. It comes to me through the Co-operative, Allied Grain Dealers Association.

Q. I know it might come to you through the Allied Co-operative.

A. And their personal check is with it.

Q. But what letterhead or what name is on the account sales?

A. Co-operative Allied Grain Dealers Association and others.

Q. What are these different items, you say inspection and weighing and so forth?

A. When I sell grain into Chicago, I have to pay a fee for weighing and inspection and sometimes a small amount of interest on drafts that I don't have at Morris because the grain is up one day and paid for the next.

Q. I have been trying to call your attention to this grain that you sell to the Allied in Morris.

A. Yes.

Q. Now, I understood you to say that on one of those account sales in connection with that grain, there were these inspection fees and so forth. Did I understand you correctly?

A. Not at Morris. Never any fee for inspection or weighing.

Q. On the account sales that you get from somebody in [fol. 929] connection with this grain delivered to the Allied at Morris, are there any items there showing inspection fees, weighing, elevation or anything of that kind?

A. No, sir.

Mr. Cole: May I ask a question?

Mr. Brown: Just a minute.

By Mr. Brown:

Q. I understood you to tell me you sold your grain as is at Morris and you had nothing more to do with it, is that right?

A. That is all I know. It goes up to Morris and they pay me for it. I don't know what they do with it.

Q. Do they pay you on the spot?

A. Just as soon as they get it weighed and inspected.

Q. Do they pay you on the spot for it, just as soon as they get it unloaded and weighed?

A. And inspected. I have had them do that. I would be right there.

Q. And other times they would send you a check later?

A. Yes. If I am up with the grain and I wait until it is graded and inspected, they will pay me right there for it.

Q. Pay you cash?

A. No, sir, check.

Q. An Allied check?

A. Yes, sir.

Q. That is what I understood you the first time.

[fol. 930] By Mr. Cole:

Q. Mr. Barclay, I understood that your town was approximately 38 miles from Morris, is that correct?

A. That is to the best of my knowledge. It is 38 miles.

Q. And that you get this grain you have been talking about within a radius of some four or five miles all around your town?

A. It will range a little further east and west than it does north and south.

Q. This Morris price that you learn of, do they quote that from day to day to others as well as to you?

A. It is always quoted delivered at Morris.

Q. It is quoted delivered Morris?

A. Yes.

Q. Now, if the farmer himself learned of the price that was being quoted at Morris, could the farmer get the same trucker that you employ and have that grain hauled down to the Allied and would the Allied then pay the farmer the price that they quoted you and would the farmer, in that event, be able to save this 2 cent normal profit that you like to make?

Mr. Belnap: Mr. Examiner, shouldn't those questions be reserved for somebody else who comes on the stand? He wants to know what Allied would do.

Exam. Taylor: The question is, what would the farmer get.

Mr. Belnap: What would Allied do? Let's have the question read.

Exam. Taylor: No, there is no Allied in this.

[fol. 931] Mr. Cole: No.

Mr. Belnap: May we have the question read.

Exam. Taylor: Read the question.

(Question read.)

Exam. Taylor: Can you get the Allied out of that?

Mr. Cole: I don't think it is objectionable the way it sets there, Mr. Examiner.

Exam. Taylor: Yould said "would the Allied pay the farmer."

Mr. Belnap: Mr. Examiner, the premise for the question is a business operation of Allied.

Mr. Day: I think—go ahead, Mr. Belnap.

Mr. Belnap: That is the only premise. Now, unless the man is qualified to state what Allied would do, he couldn't possibly answer the question.

Mr. Day: This man knows what the trade practices are down there.

Mr. Belnap: He didn't ask him what trade practices were.

Exam. Taylor: Mr. Cole is going to try to straighten it out.

By Mr. Cole:

Q. Mr. Barclay, when Allied is bidding for grain and you secure his bid, would that bid be open as well to the farmers as it would be to you?

A. I don't think so.

Q. Wouldn't the Allied pay anybody who brought grain to Morris the same price at the same time that they would be [fol. 932] willing to pay you?

Mr. Belnap: I object.

The Witness: I don't know.

Mr. Belnap: I object, if the Examiner please.

Exam. Taylor: He says he doesn't know.

Mr. Cole: All right.

Mr. Belnap: It is an improper question.

By Mr. Cole:

Q. Have the Allied people had purchasers or purchasing agents around in the territory that you work in?

A. Not to my knowledge.

Q. Not to your knowledge.

A. Deal through elevators only. My understanding is they deal through elevator men only.

Q. The Allied people deal through the elevators only?

A. Yes, sir.

Q. Now, at the time that you secured that bid from the farmer, I mean at the time you secured that bid from Allied for a certain number of cents per bushel on corn delivered at Morris, do you from the way you do business and from the way you handle it with the farmer, would it be impossible for somebody else to go to the farmer and get that same corn at the price that you offer to pay the farmer for it?

Mr. Root: Read that question again. It go so long, I lost track of it.

(Question read.)

[fol. 933] The Witness: All I know is the trade practices of the Co-operative Allied Dealers. I don't deal with any other company on the river. I have no connections with them.

By Mr. Cole:

Q. Well, Mr. Barclay, you are very well acquainted throughout your territory that you work in, aren't you?

A. I should be. I have been there 16 years.

Q. All right. Now, what is it, if you know, that prevents the farmer who has grown the grain from selling his corn direct to Allied and save your 2 cent middle-man's profit?

A. I can't answer. I can't tell what the Allied people might do.

Q. You don't know what there is that prevents that from happening?

A. I know what their practice of doing business is.

Q. I don't get you.

A. I know their business practice is to buy from grain dealers only.

Q. They buy from the grain dealers——

A. Only.

Q. Only. But do you know of any physical impediment that would prevent the farmers from selling direct to them and eliminating your 2 cent normal profit?

A. I do not.

Mr. Cole: That is all, thank you.

Exam. Taylor: Is that all from this witness? Anything [fol. 934] on redirect?

Mr. Macaulay: One question.

Redirect examination.

By Mr. Macaulay:

Q. Mr. Barclay, if you were deprived of the Morris market, do you believe it would be possible to compete with the itinerant trucker who would buy grain in your territory?

A. Well, it wasn't in the past. Probably the same practices would show up again; if I didn't have a way to defend myself, I probably would begin losing this business again.

Mr. Macaulay: That is all.

Exam. Taylor: Is that all?

Mr. Belnap: I would like to ask one or two questions.

Exam. Taylor: Now, let's see. Isn't this Mr. Root's witness?

Mr. Belnap: Yes, I would like to ask——

Mr. Root: I haven't had a chance to ask yet.

Mr. Belnap: I won't ask the question if you will rule it out.

Exam. Taylor: You are not ruled out, but I thought Mr. Root should come first. It is his witness.

Mr. Root: I understood Mr. Belnap came first.

Exam. Taylor: It isn't cross-examination; it is redirect.

Mr. Belnap: There were some matters developed in the cross-examination which I am not quite clear on and I wanted to inquire on.

[fol. 935] Exam. Taylor: You are redirect. Go ahead.

Mr. Belnap: If I may.

By Mr. Belnap:

Q. When you sell grain to the river, do you purchase it yourself from the farmer first?

A. Yes, sir.

Q. When you sell grain for shipment by rail to Chicago, do you purchase it from the farmer yourself?

A. Yes, sir.

Q. Is your relationship between yourself and the producer the same in both cases?

A. Yes, sir.

Mr. Belnap: That is all I have.

Exam. Taylor: Mr. Root, have you any further questions?

Mr. Root: That was the same question I was going to ask, get that relationship straightened out.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Exam. Taylor: Gentlemen, let's come to order. I understand Mr. Burwell wants to get out of town. Burwell, is that the name?

Mr. Macaulay: May I say something off the record?

Exam. Taylor: Off the record.

[fol. 936] (Discussion outside the record.)

T. C. Burwell, was sworn and testified as follows:

Direct examination.

By Exam. Taylor:

Q. Give your name to the reporter, please.

A. My name is T. C. Burwell. I am vice-president of the A. E. Staley Manufacturing Company, located at Decatur, Illinois. I have been connected with the traffic department of the Staley Company for more than 22 years, and prior to that time was with the Wabash Railway in various capacities.

The Staley Manufacturing Company buy corn and soy beans at various points in Illinois, including the terminal markets which are processed at Decatur and which are processed at Painesville, Ohio. They also buy corn and soy beans in adjoining states. We buy wheat, corn and oats for the purpose of merchandising such commodities as such. We are here in support of the tariff of the carriers which restricts the reshipping rates eastwardly from Chicago so as not to apply on ex-river grain.

There is a saturation point in the Chicago market which is soon reached in so far as such ex-river grain is concerned, and where the reshipping rates eastwardly from Chicago are not applicable on such grain, the grain would move through the elevators from which we purchase grain. We find, to keep our plant in operation, that it is necessary for us at times to come into the Chicago market and buy grain which has moved into Chicago via the river; where

[fol. 937] in times past we have been able to buy such grain direct from the elevators, including the elevator at Wing, represented by the previous witness.

I might add further there that the Illinois carriers have published alleged truck-competitive or water-compelled rates applying on intrastate traffic into Chicago, which rates are not subject to transit and which rates are compelled by reason of the fact that the reshipping rates eastwardly from Chicago do now apply on ex-river grain. Our position is that the application of such rates is harmful to the best interests of the producers of grain and the merchandisers of grain outside of the Chicago district.

I think that is all I have.

Exam. Taylor: Questions by respondents? (No response.) Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Do you now bid the elevator at Wing?

A. Yes. sir, we bid the elevator at Wing, including some five or six hundred other elevators throughout the state of Ilinois.

Q. And when your bid is the best bid the elevator has, you are able to get the grain?

A. That is correct.

Q. And when the grain instead of being sold you direct from that elevator moves into the terminal market, is it because the elevator can get more money out of the grain [fol. 938] when it makes that movement?

A. There are two reasons for grain to move to terminal markets. If you have a soft market, the elevator operator in the country station will probably sell it to us at a firm price. On the other hand, if your market is a bullish market, he will take his chances and consign to Chicago, expecting to get a cent and a half more tomorrow morning. It depends entirely on the market conditions.

Q. You are talking in both cases about rail movements, are you not?

A. Yes.

Q. When your bid is competing with a bid from the river, the grain goes to the river, I would understand, because

the price to the elevator man and through him to the farmer is better than the price you may be able to offer?

A. That is correct.

Q. And that is a condition which adversely affects your intersts?

A. That is right.

Q. As a purchaser of grain?

A. That is right.

Q. Do you think that would be corrected, looking at it from your standpoint, if the proposal of the Eastern lines was made effective?

A. We know it will be corrected to a certain extent; not [fol. 939] entirely, but it will be a very substantial per cent of it will be corrected.

Q. That is to say, the elevator man will then not have this better bid from the river, better than your bid?

A. That is right.

Q. That is what you hope to achieve?

A. That will be the result.

Exam. Taylor: Mr. Macaulay.

By Mr. Macaulay:

Q. In other words, if the reshipping rates are eliminated from barge grain, you wouldn't be required to buy as much of your grain in the Chicago market as you are now required to buy?

A. That is correct.

Mr. Macaulay: That is all.

The Witness: It would mean this to the rail carriers; elaborating on the answer, taking from Wing, for example, we would buy grain at Wing and we would pay an all-rail rate under a transit operation to New York, for example. It would be more money to the carriers in the aggregate.

Mr. Belnap: Would you indulge me for one question suggested by this question and answer?

Exam. Taylor: Certainly.

By Mr. Belnap:

Q. When you buy in the Chicago market, do you buy through commission firms?

A. That is right.

[fol. 940] Q. And if this change is brought about, you think there will be less business for the commission firms?
A. Yes. Cut out the middle-man.

Mr. Brown: That suggests a question, if you please.

Redirect examination.

By Mr. Brown:

Q. When you say "commission firms," do you mean commission merchants of the so-called receiving class or some commission merchants who are order buyers?
Mr. Root: I didn't hear that question.

(Question read.)

Exam. Taylor: By "order buyers," do you mean on the Board of Trade?

By Mr. Brown:

Q. On the Board of Trade, who take orders from these firms to buy from any elevator they can buy from?
A. Are you asking me that question?
Q. Yes, sir.
A. The answer is—I refer to the latter, a man who takes an order from us and buys from whomever he can buy it from to fill the order.

By Mr. Belnap:

Q. That man is a member of the Chicago Board of Trade, isn't he?
A. Yes. So are we.

Exam. Taylor: Any further questions of this witness?
Mr. Cole: I have one, Mr. Examiner, please.
Exam. Taylor: Mr. Cole.

[fol. 941] By Mr. Cole:

Q. Mr. Burwell, Mr. Belnap asked you whether you put out bids to this elevator—where was it?
Mr. Enoch: Wing.

By Mr. Cole:

Q. At Wing, and in some instances it was found that he sold to the water and you didn't get your order filled

with grain that time. At the same time, did you have your bids out over the territory from which you draw from?

A. That is right. If you would like, I will e aborate on our bidding system.

Q. No, I don't mean that.

A. The answer is yes.

Q. And at the time that this bid at Wing was unfilled, were you able to get grain at your bids in other territory?

A. If we are not able to get it in other territories in the country from the country elevator operator, we were then compelled to come into the Chicago market or to the terminal markets and buy the grain.

Mr. Cole: That is all. Thank you.

Exam. Taylor: Is that all from this witness?

Mr. Belnap: I haven't any more questions.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam Taylor: Mr. Bradofrd, they want to ask you a question. Have you any objection to taking the stand?

Mr. Bradford: Mr. Examiner, I was here last night and [fol. 942] I came back this morning. I broke engagements to come back here and I don't see why I should be called back on the stand because counsel was not here. I do object to going back on the stand.

Mr. Macaulay: Just so the record might show, I was here before the convening of the session this morning. There was no appearance that it was going to convene shortly.

Exam. Taylor: Did that give you any right to leave?

Mr. Macaulay: I just want to show why——

Exam. Taylor: May not the Examiner have held the meeting open or not convened the meeting because of some reason that you didn't understand about?

Mr. Macaulay: I am not objecting to that part, your Honor. I am making——

Exam. Taylor: I want to know if you are criticising the Examiner's action.

Mr. Macaulay: Not at all, your Honor, not at all. That is not it. I thought I had an opportunity to get up to the 39th floor and get my bag before this witness would be excused. He hadn't taken the stand and I had reason to believe that I——

Exam. Taylor: I am sorry, Mr. Macaulay, but the witness refuses to take the stand again. Next witness. Mr. Belnap.

Mr. Root: Are we putting ours on now?

Mr. Belnap: Mr. Examiner, I now have examples of the documents covering inbound shipments of grain via the river to Chicago.

[fol. 943] Exam. Taylor: Show them to counsel, please.

Mr. Belnap: Yes, I will. I would like to say for the record what they are.

Exam. Taylor: Yes.

Mr. Belnap: These are carbon copies of the originals and have the paid stamp.

Mr. Day: There are two of them, are there?

Mr. Belnap: There are two of those. I have a carbon copy of a freight bill covering a movement inbound under the interstate proportional——

Exam. Taylor: Intra?

Mr. Belnap: Interstate proportional. I have a carbon copy of a freight bill showing the movement inbound under a lake local and I also have the document covering a lake movement into Chicago, which is enttiled a lake grain bill of lading, has the weighmaster's tally affixed thereto.

Exam. Taylor: And that shipment originated at Duluth?

Mr. Belnap: This shipment originated at Duluth.

Exam. Taylor: And came down Lake Michigan on a boat?

Mr. Belnap: That is correct, sir, to South Chicago.

Exam. Taylor: South Chicago?

Mr. Belnap: South Chicago. These are samples of the documents which are registered with the Inspection Bureau. We do not have a Federal Barge Line expense billing. None of my people happen to have one available.

[fol. 944] Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Belnap: Mr. Examiner, I hand you a freight bill of the John I. Hay Company, No. 1387, which is a carbon copy of an original registered with the Inspection Bureau.

Exam. Taylor: This shipment originated at La Salle?

Mr. Belnap: At La Salle.

Exam. Taylor: Moved to Chicago by the barge canal?

Mr. Belnap: By the John I. Hay Company, via the Illinois waterways.

Exam. Taylor: And this bill was surrendered through the Inspection Bureau for registration?

Mr. Belnap: It is registered with the Inspection Bureau for transit purposes.

Exam. Taylor: It will be received as Exhibit No. 23.

(Exhibit 23, received in evidence.)

Mr. Belnap: I have another bill covering a shipment of another date.

Exam. Taylor: Just a minute.

Mr. Brown: What kind of grain did that cover, Mr. Belnap?

Mr. Belnap: That covered corn; the exhibit just marked. I have another bill covering a shipment of beans, which, in other regards, is similar to the one marked 23.

Exam. Taylor: Also moved by the barge canal from La Salle to Chicago and was surrendered to the Inspection [fol. 945] Bureau for registration of the beans.

Mr. Belnap: That is correct, sir.

Exam. Taylor: Mark that exhibit 24.

(Exhibit 24, received in evidence.)

Mr. Belnap: Mr. Examiner, I now hand you a carbon copy of a Santa Fe expense bill, which covers an inbound movement to Chicago via rail, and as to the rate shown thereon, being interstate proportional——

Exam. Taylor: Interstate?

Mr. Belnap: Interstate proportional.

Exam. Taylor: That transportation paper was also registered with the Inspection Bureau?

Mr. Belnap: That is correct, sir, and the original on that bill is——

Exam. Taylor: Blandinsville?

Mr. Brown: Blandinsville, Illinois?

Mr. Belnap: The bill covers a shipment, Mr. Examiner, from Sciota, a non-agency station, the bill of lading being issued at Blandinsville, Illinois.

Exam. Taylor: That is also bulk beans. It will be received as Exhibit 25.

(Exhibit 25, received in evidence.)

Mr. Brown: And what was the rate you said was interstate?

Mr. Belnap: 14 cents.

[fol. 946] Mr. Brown: To Chicago? The next document I hand you, Mr. Examiner, is a carbon copy of a freight bill of the Chicago, Rock Island & Pacific Railway Company, covering a shipment of corn from Tinley Park, Illinois, the rate shown thereon being the lake local.

Exam. Taylor: Five cents.

Mr. Belnap: That bill was—the original of that bill was also registered with the Inspection Bureau for transit purposes.

Exam. Taylor: Mark it Exhibit 26.

(Exhibit 26, received in evidence.)

Mr. Belnap: I next hand you, Mr. Examiner, a lake grain bill of lading covering a shipment of rye via lake steamer from Duluth, Minnesota, to South Chicago, Illinois. This is the original billing. It has the memorandum of the weighmaster attached thereto. The carbon of that bill was registered with the Inspection Bureau.

Exam. Taylor: That shipment moved from Duluth on August 20, 1938, to South Chicago, Illinois?

Mr. Belnap: That is correct, sir.

Mr. Brown: 1938?

Exam. Taylor: 1938; August 20, 1938, 144,000 bushels of No. 1 rye. That will be received as Exhibit No. 27.

(Exhibit 27, received in evidence.)

Mr. Brown: Mr. Belnap——

Mr. Belnap: Yes, Mr. Brown?

[fol. 947] Mr. Brown: Are all of these other bills besides the ex-lake bills of lading of recent date?

Mr. Belnap: Yes, they were December. The two barge bills were December bills. Take a look at them.

Mr. Brown: December of this year?

Mr. Belnap: Yes. I didn't look at the freight bills.

Mr. Brown: You offered them. Is there any rate for transportation shown on these barge bills?

Mr. Belnap: I think they speak for themselves, Mr. Examiner.

Mr. Enoch: I think the record should show at this time who it was that rendered these bills for the purpose of engaging the outbound proportional rate.

Mr. Belnap: I will be glad to read in from these bills, Mr. Examiner, just read them in.

Exam. Taylor: Read them in, in accordance with the question.

Mr. Belnap: Perhaps it would be helpful if I took one of these barge bills about which there seems to be the greatest interest and read everything that is on the bill. That will — part of this record.

Mr. Enoch: I haven't any objection to doing that, but you stated who surrendered it for engaging the outbound —tional?

Mr. Belnap: Yes, but let me read the bill.

[fol. 948] Mr. Enoch: I am going to come back to that question.

Mr. Belnap: It is headed: "Freight bill, John I. Hay Company, 37 West Van Buren Street, Chicago, Illinois." The freight bill is No. 1355, trip No. CC-62, invoice date December 2, 1939, tow boat Anna M., barge 109, shipping date December 1, 1939, shipping point La Salle, Illinois. It is addressed to the Continental Grain Company, 332 South La Salle Street, Chicago, Illinois. That is all in the heading.

Mr. Brown: Is that Exhibit 23?

Mr. Belnap: This is Exhibit 24.

Mr. Brown: The one you gave was Exhibit 23, the corn; the one you just read.

Mr. Belnap: No, this is Exhibit 24, the one I am reading from.

Mr. Brown: All right.

Mr. Belnap: Below the heading it shows as follows: "Freight from La Salle to Chicago, Illinois, viz:" there was originally typed on the bill 34,000. That has been stricken out and in red above that appears "31,957.50 bushels beans @ $.015 per bushel." In the extension, the figure originally was $510.00. That is in typewriting. That has been stricken out in red, and over it now appears $479.37. In ink then appears on the bill this: "Paid 12/6/39, John I. Hay Company." There is then a stamp on the bill, "Paid December 6, 1939, Continental Grain Company, Chicago." Then in red pencil appears on the bill, "Unloaded [fol. 949] R. I. Terminal Elevator, 12/4/39," and a number, 1917470, followed by the cross hatch pound mark.

That bill, in answering Mr. Enoch's question, was registered with the Inspection Bureau by the Continental Grain Company.

Mr. Enoch: Now, may I suggest, if your Honor please, that inasmuch as these documents are in evidence by exhibit number, there is no use reading them in the record, and I think if Mr. Belnap will identify it by number, and say by whom it was surrendered, what shipper, that is all I care about.

Mr. Belnap: I can answer that question, Mr. Examiner. Exhibit 23 was registered with the Inspection Bureau by the Continental Grain Company. It shows a freight bill rendered to the Continental Grain Company.

Mr. Brown: Same rate for the freight charges?

Mr. Belnap: The same amount per bushel, except that the bill covers corn. The railroad expense bills which are exhibits Nos. 25 and 26, were registered with the Inspection Bureau by the Continental Grain Company; Exhibit 27 being the original lake grain bill of lading, was registered with the Inspection Bureau by the Norris Grain Company.

Exam. Taylor: Now, you have some, Mr. Cole?

Mr. Cole: The next one will be what number?

Exam. Taylor: No. 28. Off the record.

(Discussion outside the record.)

[fol. 950] Exam. Taylor: All right, Mr. Cole.

Mr. Cole: I offer Exhibit No. 28, which is an exact copy of the transportation paper registered with the Central Weighing and Inspection Bureau, representing a shipment to the Continental Grain Company of——

Mr. Tannehill: What number?

Mr. Cole: I am looking at 379106, Transit Bureau 379106. I don't find the kind of grain. I am looking for the kind of grain it is.

Mr. Tannehill: Corn.

Mr. Belnap: Does it say corn on there?

Mr. Tannehill: It doesn't say so.

Mr. Cole: It says it represents 44,804.16 bushels. It does not indicate what kind of a commodity it is, other than it is in bushels. It shows that a freight charge——

Exam. Taylor: Let's see if, Mr. Tannehill can tell us from papers he has.

Mr. Cole: No, he has a copy of this.

Mr. Tannehill? I have a copy of this.

Mr. Enoch: Do you want to know what the commodity was?

Mr. Cole: That is what I was hunting for.

Mr. Enoch: It isn't shown on the bill but Mr. Tannehill has some other information.

Mr. Tannehill: I have outbound shipping records on the same Transit Bureau No. 379106; corn.

Exam. Taylor: That is received as Exhibit 28.

[fol. 951] (Exhibit 28, received in evidence.)

Mr. Schier: What freight rate is shown on that?

Mr. Tannehill: One and a half cents a bushel.

Mr. Brown: Did you give the transportation company at Chicago?

Mr. Tannehill: John I. Hay.

Mr. Cole: Exhibit No. 29 is a copy of a paper registered with the Transit Bureau, representing a movement——

Mr. Tannehill: Will you call off the Transit Bureau number?

Mr. Cole: The Transit Bureau number, 391584, representing a movement by the Mechling Barge Line from Peoria to the Continental Grain Company in Chicago, 28,000 bushels of bulk yellow corn at a transportation charge of 4 cents.

Mr. Brown: Per bushel?

Mr. Tannehill: 4 cents per hundred pounds.

Exam. Taylor: And apparently the weight shown on that bill is 1,566,610 pounds.

Mr. Tannehill: That is correct.

Exam. Taylor: It will be received as Exhibit No. 29.

Mr. Childe: What was the original point of the first shipment, Exhibit 28?

Mr. Belnap: La Salle.

Mr. Tannehill: La Salle.

Mr. Cole: Exhibit No. 30 is a copy of the transportation [fol. 952] papers registered with the Inspection Bureau, representing their No. 391585. It covers a movement via the Lawrence Transportation Company to the Continental Grain Company. The point of shipment was Mile Nine, Illinois. It represents bulk——

Exam. Taylor: Date?

Mr. Cole: The date of the shipment was November 15, 1939. Represents a shipment of bulk corn, 8,367 bushels and 18 pounds. The total weight of the shipment was 468,570 pounds and it shows a freight rate paid to Chicago of 5 cents.

Mr. Enoch: It doesn't say anything about rate on there, does it?

Mr. Cole: No, it just shows 5 cents in there, and the total bill was $234.29. That has been computed out as the total of the bill.

Exam. Taylor: It will be received as Exhibit 30.

(Exhibits 29 and 30, received in evidence.)

Mr. Cole: Exhibit No. 31 is the copy of the transportation papers registered at the Transit Bureau under Transit No. 392284, representing a movement via the transportation system of John I. Hay Company. It is a shipment to the Continental Grain Company from La Salle consisting of 43,007.38 bushels of yellow corn. It shows a cent and a half per bushel with a total transportation bill for $645.12.

Exam. Taylor: And the number of pounds unloaded into the Rock Island Terminal Elevator, 2,408,430 pounds. It [fol. 953] will be received as Exhibit 31.

(Exhibit 31, received in evidence.)

Mr. Cole: Exhibit No. 32 is a copy of the transportation papers registered with the Transit Bureau under their No. 392790, representing a movement via the Allied Barge Corporation for the Lowel Hoit and Company at South Chicago, representing a shipment from Morris, Illinois, November 25, 1939, of some oats. There is 19,271.08 bushels of oats and beans, 8,014.20 bushels of beans. The rate here on the oats is .014. The rate shown on the beans is .0175. The total freight bill, according to this bill for the oats is $269.79, and for the beans is $140.25, making a total of this bill, which is receipted, in the amount of $410.04. The total weight in the shipment represented by this Transit Bureau No. 392790, is 1,097,640 pounds. This is made up, as I said before, of the beans and the oats. That is the total.

Exam. Taylor: It will be received as——

Mr. Brown: Give me the barge number, please, if there is any shown, will you, please.

Mr. Cole: Barge No. 745.

Exam: Taylor: It will be received as Exhibit 32.

(Exhibit 32, received in evidence.)

Mr. Enoch: Mr. Cole, there isn't anything on there about a rate, is there?

Mr. Cole: It just uses that as the figure which they have

[fol. 954] worked out to the total that is over on the right hand side.

Exam. Taylor: And the inference is that it is a receipted freight bill, that that was the charge that was collected for transportation.

Mr. Enoch: That is right.

Mr. Cole: Exhibit No. 33 is a copy of the paper, transportation papers registered with the Transit Bureau under their No. 392627. It represents a movement via the A. L. Mechling Barge Line, covering a shipment to the Norris Grain Company at Chicago from Henry, Illinois, November 25, 1939, moving in Barge No. 4, and it shows that this shipment was composed of three commodities; corn, oats and beans; 241,480 pounds of corn; 150,480 pounds of oats; 235,070 pounds of beans; making a total weight of the three commodities of 627,030 pounds, and there is no statement on this paper indicating the amount of the freight either per bushel or per pound for the total freight paid. It is simply stamped that it has been prepaid, without any indication of what has been prepaid.

Exam. Taylor: And it shows that it was unloaded November 28, at the Norris elevator. Let it be received as Exhibit 33.

(Exhibit 33, received in evidence.)

Mr. Cole: Exhibit No. 34 is a copy of the transportation papers registered with the Transit Bureau under their No. 392626, representing a movement via the A. L. Mechling Barge Line, in Barge No. 7, to the Norris Grain Company at Chicago, representing a shipment originating at Chilli- [fol. 955] cothe, Illinois, November 27, 1939. The shipment is corn; 690,600 pounds, unloaded November 26th in the Norris elevator—November 28th, rather. There is no statement on the bill or paper that any amount per bushel or per weight of any kind was paid, nor the total. It doesn't show the total charges paid; it simply is marked "prepaid."

Exam. Taylor: It will be received as Exhibit 34.

(Exhibit 34, received in evidence.)

Mr. Cole: Exhibit No. 35 is a copy of the transportation papers registered with the Transit Bureau under their No. 319812, representing a shipment moving via the A. L. Mechling Barge Line to the Norris Grain Company in Chicago, covering a shipment originating at Patonville,

Illinois, April 7, 1939. It has on it: "Finnegan Grain Corporation, Barge No. 1108; tow boat: Gladys M." It shows that it covers the shipment of corn weighing 1,546,290 pounds, which was unloaded in the Norris private and public elevator under date of April 10, 1939. This paper, again, does not show the amount paid, either per bushel or per hundredweight, and does not show the total charges that were paid.

Exam. Taylor: For the transportation.

Mr. Cole: For the transportation. It simply shows the word "prepaid."

Exam. Taylor: It may be received as Exhibit 35.

(Exhibit 35, received in evidence.)

[fol. 956] Mr. Cole: Exhibit 36 is the copy of the transit papers registered with the Transit Bureau under their No. 320786, covering a shipment via the A. L. Mechling Barge Line to the Norris Grain Company, South Chicago, representing a shipment from Patonville, Illinois, originating April 12, 1939. It shows that it moved in Finnegan—or rather there is a statement on there of a Finnegan Grain Corporation Barge No. 1112, Gladys M. It shows that the commodity was corn to the amount of 1,581,590 pounds; unloaded in the Norris elevator on April 14, 1939. This paper does not show any rate per bushel or per hundredweight nor does it show the total transportation charges paid. It simply has on the bill the word "prepaid."

That is all.

Mr. Brown: What barge number, please?

Mr. Cole: It says "barge No. 1112."

Mr. Macaulay: I want to call attention to the fact that there is a space between "Finnegan Grain Corporation" and "Barge No. 1112," so there is no particular tie-up between the name of the—the number of the barge and the name of the company that was shipping. The information that shows on the original probably had designations which would indicate who the shipper was.

Mr. Enoch: Perhaps he will have a witness explain all that for us.

Mr. Macaulay: Yes, I will. But the way it was read into [fol. 957] the record, it looked as though that barge number was connected with the Finnegan Grain Corporation.

Exam. Taylor: That will be received as Exhibit No. 36.

(Exhibit 36, received in evidence.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

W. T. TANNEHILL, recalled, previously sworn, testified further as follows:

Direct examination.

By Exam. Taylor:

Q. Mr. Tannehill, I believe you have been checking up on the record numbers that have been given of the Transit Bureau, and do you have a paper before you that shows that these same shipments moved out and——

A. I have a record before me, Mr. Examiner, which shows as to Barge 102 from La Salle on October 25, 1939, that there was—that a portion of that moved out to order of the Continental Grain Company, Baltimore, Maryland; notify: Continental Grain Company, New York; and that the commodity was corn. It covers two outbound carloads from that shipment.

Q. And that outbound movement was accorded the outbound transit rate?

A. That is correct.

Q. The balance of the through rate from the——

By Mr. Brown:

Q. It wasn't the transit rate, was it, Mr. Tannehill? It was the proportional, wasn't it, is that right?

[fol. 958] A. The reshipping export rate of 16 cents is shown on here.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

By Exam. Taylor:

Q. Just following through the record of the Transit Bureau, Mr. Tannehill, you are going to introduce as Exhibit No. 37 the outbound information?

A. Exhibit 37 is a copy of the Transit Bureau's No. 105949, dated October 31, 1939, at Chicago. The printed form is headed "Transit Shipping Direction." It shows that two cars of bulk corn were ordered to the Continental Grain Company, Baltimore, Maryland; notify the Continental Grain Company, New York, for export. Transit house of the Rock Island Terminal Elevator. The date loaded, October 30th, and this Transit Shipping Direction hooks up with Exhibit 28 to show that the inbound move was in connection with the John I. Hay Company, Barge 102, from La Salle, Illinois, and that the commodity was corn. One car weighed 120,000 pounds and one 93,000 pounds. The outbound rate was 16 cents, which in this instance was the reshipping export rate.

Q. The reshipping export proportional rate?

A. Proportional reshipping, either.

Exam. Taylor: Exhibit 37, will be received.

(Exhibit 37, Witness Tannehill, received in evidence.)

Mr. Belnap: May I ask a question or two about this?

Exam. Taylor: Yes.

[fol. 958a] Cross-examination.

By Mr. Belnap:

Q. Mr. Tannehill, might I inquire as to Exhibit 37. Is that the same form used when the reshipping or proportional rates are claimed on a shipment which has had prior transportation by rail?

A. That is correct.

Q. Is it also used on a shipment outbound from Chicago which has had prior transportation by rail?

A. That is correct.

Mr. Brown: May I ask Mr. Tannehill a question following this one?

Exam. Taylor: Certainly.

By Mr. Brown:

Q. Mr. Tannehill, is this 16 cent proportional rate the same as the Eastern rails' division of the joint through rail rates from Illinois to Baltimore for export?

A. Yes.

Q. And is this 16 cent reshipping rate the same rate that would apply on grain that came in by rail from Iowa, Minnesota and Wisconsin?

A. If it was for export.

Q. For export?

By Mr. Belnap:

Q. Is there a joint through export rate from La Salle to the destination of your shipment?

A. By rail?

Q. Yes.

[fol. 959] A. Yes, sir.

Mr. Brown: I would like to ask counsel a question now.

Mr. Belnap: Who, me?

Mr. Brown: Yes, you introduced these things. You said that you couldn't furnish a Federal Barge Line manifest or bill of lading. Don't you have those into Chicago, showing movement to Chicago?

Mr. Belnap: We did not have one available that could be readily located this morning.

Mr. Brown: That is because there has been none?

Mr. Belnap: The record will show what volume there was, Mr. Brown; what volume moved which was covered by documents.

Mr. Brown: By movement by the Federal Barge Line to Chicago?

Mr. Belnap: I think the record will show there have been shipments via Federal Barge Lines to Chicago. That is going to be covered by a witness and he will say whatever tonnage moved and was covered by the ordinary shipping documents. All I said was, in the short time available, we weren't able to locate one this morning.

Mr. Childe: Mr. Examiner, I would like to inquire in connection with the joint through rate from La Salle to Baltimore just mentioned by Mr. Tannehill, whether that is based on a combination of locals on Chicago, plus proportionals out?

Mr. Cole: If the Examiner please, we went into that when Mr. Tannehill put his exhibits in, and one of Mr. [fol. 960] Tannehill's exhibits shows exactly that same thing, and at the time that Mr. Tannehill put it in, Mr. Childe, the same man that is cross-examining now, cross-examined on that very point. So that the record is abso-

lutely as clear as we could hope to make it as to just how those rates are made up.

Exam. Taylor: Does that satisfy you?

Mr. Childe: No, sir. I would like to know as to this rate. As far as I recall it, it isn't in any exhibit, how it is made up.

Mr. Cole: I object——

Mr. Brown: Mr. Examiner, I asked Mr. Tannehill if this 16 cent rate from Chicago to Baltimore was the division of a one-factor through rate from points in Illinois to Baltimore for export, and he said yes. Now, it doesn't make any difference how that rate is made from La Salle or any other point. This is what the Eastern railroads get out of that through rate.

Mr. Childe: I would like to know what the through rate is.

Mr. Day: Well, could we agree to supply Mr. Childs a joint through rate after a while, to save time?

The Witness: A joint through rate is in one of my exhibits. I can't recall that.

Mr. Brown: If somebody has got the ICC number on 245-F, that will give that.

Mr. Schier: ICC 3356.

Mr. Brown: Now, Mr. Childe, you can get the information [fol. 961] out of that tariff.

Mr. Childe: I am satisfied if it is furnished for the record, which the carriers' witness has just agreed to do.

Mr. Day: We will find it and give it to Mr. Childe.

Mr. Cole: May we go off the record, please?

Exam. Taylor: Yes.

(Discussion outside the record.)

Exam. Taylor: Back on the record.

Mr. Cole: If the parties will get Exhibit No. 9 and if Mr. Childe will get Exhibit No. 9, it will be recalled that when Mr. Tannehill put this exhibit in as explaining the rate situation and as illustrating the rate situation, these very questions as to the make-up and how they were worked through Chicago, when they did work through Chicago, was gone into by Mr. Childe. There is the exhibit.

Mr. Childe: Can't we get the rate without all this conversation, Mr. Examiner?

Exam. Taylor: You started it. Next witness.

(Witness excused.)

Mr. Root: May I call a witness?

Exam. Taylor: I would like to proceed in some kind of an orderly fashion.

Mr. Cole: Off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

[fol. 962] Exam. Taylor: On the record. I want to know if the respondents agree that the exhibits which have been introduced this morning, including those by Mr. Belnap, starting with Exhibit 23 and going to the last one introduced, Exhibit No. 37 introduced by Witness Tannehill, are demonstrative of the through movement of the grain, beans, corn, whatever it is, from the origins stated, through the transit house at Chicago to ultimate destination in the East? Is that agreed to?

Mr. Day: Taken comparatively, I think we can agree to that.

Exam. Taylor: I think that will be sufficient.

Mr. Cole: Thank you.

Mr. Enoch: I agree that these documents are typical of those surrendered in an effort to properly engage these outbound proportional rates, but I don't agree that there is any through movement in connection with it.

Exam. Taylor: As to that, I think you can argue on your brief. Off the record.

(Discussion outside the record.)

Exam. Taylor: Call your next witness, Mr. Root. Proceed, Mr. Root.

Mr. Root: Mr. Carper, please.

R. W. Carper was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

[fol. 963] A: R. W. Carper.

Q. Where do you reside?

A. Coal City, Illinois.

Q. State your business or occupation.

A. I am a farm operator. I operate ten farms in Grundy County, in five different townships, of my own and my wife's, and I also operate by other parties some 15 farms. I might say, these ten farms average about 240 acres each. They are primarily grain farms. We have a few cattle, few dairy herds, small. These 15 farms that I operate are smaller. They are operated by other people.

Q. Grain farms?

A. They are primarily grain farms.

Q. Do you engage in any other business or occupation down there?

A. I have been also in a little bank down there for some 15 years.

Q. As a matter of fact, you are president of the Coal City Bank?

A. President, at the present time.

Q. Mr. Carper, have you got a statement that you would like to make in regard to this case?

A. Well, from the standpoint of a producer of grain, we have achieved an advantage down there and we don't like to see it taken away from us, and I have some figures here. I don't like to quote figures, but I can give them to the Examiner, that might substantiate my assertion.

[fol. 964] Q. What I would like to have you state particularly, if you have the figures, the benefits which you have derived.

A. Well, I have records back to 1925; in fact, I have records further back than that but I suppose they are so old that I couldn't check them up very carefully. But I know from 1925 up until the time that the waterway was opened up, the elevator at Coal City, almost any elevator, as near as I can get, understand it, and of course I sold lots of grain. I have sold grain now for 25 years, quite a few bushels. They usually took about 9 cents on the Chicago market. That was on the Chicago cash market on grain shipped from Coal City by rail, which is located, Coal City, about 12 miles from Morris.

By Mr. Brown:

Q. Is that a hundred or a bushel?

A. That is a bushel. About three weeks ago, I asked our elevator man at Coal City for a bid on No. 2 yellow corn, and he quoted me 50 cents per bushel. I checked it up

the same day on that same grain in Chicago, selling at 56 cents. Now, this grain they bid me on was to go through the waterway at Morris. And I think you can see from that figure there that we have at Coal City an advantage of about three cents over the old bid on the rails.

Mr. Enoch: I wish you would give that again. I don't understand.

The Witness: Can't you? I thought you fellows, being lawyers and everything like that, ought to understand fig-
[fol. 965] ures like that.

Mr. Enoch: Never mind, Mr. Witness. I move those remarks be stricken from the record and I am only asking this witness to read again from the statement which he has in front of him.

The Witness: Let me put it like this, then——

Mr. Enoch: May I ask him to read the statement, if the Examiner please?

Mr. Root: I object to that. He can answer the questions as he sees fit.

The Witness: I don't care to read that. I will put it another way. It is in the record.

Exam. Taylor: We can have it read off the record. Read the statement, Miss Reporter.

(Answer read.)

By Mr. Enoch:

Q. Do you mean that bid back in 1925?
A. Yes.

Exam. Taylor: He said yes.
The Witness: Yes.

By Mr. Root:

Q. Now, proceed with your statement, Mr. Carper.
A. There is one more question enters into that. This bid that is made at Coal City usually includes—is usually made on the farm.
Q. Was this particular bid of 50 cents on the farm or at the elevator?
A. At the farm.
[fol. 966] Q. About how much is the usual cost of trucking in from that farm to the Coal City elevator?

A. The average cost, I would say, from my farms is a cent and a quarter.

By Exam. Taylor:

Q. A bushel?

A. A bushel. Some of them are under the cent and some run over, but the average cost on my farms would be a cent and a quarter from the farms to the elevator at Morris.

By Mr. Day:

Q. Will you tell us the approximate distances they cover?

Mr. Root: I beg——

Mr. Day: I just thought if he could give us that information while he is talking about that, we would have it all in one place.

Mr. Root: If the Examiner please——

Mr. Day: Strike my question.

Exam. Taylor: Strike the question. Reserve it for cross.

The Witness: There is a point I would like to bring out here, Mr. Examiner, if I may. I am representing producers. I am not representing any other class of people, because I have these farms of my own and my clients and we try to get the most we can for ourselves and our tenants. I operate these farms, practically all, on—I call it a partnership basis. We have men with us that have been there 15 years. We operate this farm on a share basis. At Coal City, the land, [fol. 967] as probably a lot of these fellows know, isn't considered so valuable, so we go on a three-fifths and a two-fifths basis.

By Mr. Root:

Q. Who gets the three-fifths?

A. The tenant gets the three-fifths; and on the better class of our farms, we get half, and it is all a partnership basis. Now, this changing of this rate is just simply going to mean, in my opinion, a great loss to thousands of farmers operating these farms up and down the Illinois Valley.

Q. Mr. Carper, can you give us some estimate in bushels of the corn, beans and oats that have been produced on the ten farms owned by you and your wife this year which will be for sale; I mean you and your tenants.

A. Yes, I am only quoting now ten farms. We produced this year, 1939,—say 20 per cent has been sold—20,000 bushels of corn, 7,500 bushels of soy beans. The beans have been practically, oh, two-thirds of them have been sold. 20,000 bushels of oats of which two-thirds have been sold. As I stated before, these farms have other things in the shape of some livestock.

By Exam. Taylor:

Q. Does that complete your statement?

A. Well, I do think that an injustice is going to be done to the producers of grain in this district. Of course, it is going to hurt somebody. But it must progress and we can't help that.

Q. That concludes your statement?

A. Yes.

Exam. Taylor: Questions?

[fol. 968] Mr. Belnap: Yes, I have a question.

Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. Did the period in which, according to your experience, the price bid you at your farm for corn averaged 9 cents less than the Chicago cash market, extend up to the period in which the movement of grain developed by the Illinois waterways?

Mr. Enoch: I object to that as a leading question. That is not cross examination. That is counsel's own witness, and I prefer the witness' testimony——

Mr. Belnap: I am a little afraid Mr. Enoch, maybe inadvertently, tried to mislead the witness. I followed his original statement and he said from the period of 1925 up to the time——

The Witness: Of the waterways.

Mr. Belnap: The waterways opened, a certain thing happened. Then Mr. Enoch had him read from the record and said, "That was of 1935, wasn't it?"

Mr. Enoch: What was of 1925?

Mr. Belnap: The 9 cents difference between the bid at the farm and the Chicago cash market.

Mr. Enoch: I asked him about the bid. He was talking about the bid of 1925.

Exam. Taylor: Now, there is an objection to the question, Mr. Belnap, because it is leading.

Mr. Belnap: May I restate it?

[fol. 969] Exam. Taylor: You can restate it to avoid that objection.

Mr. Belnap: Yes.

By Mr. Belnap:

Q. What was the period in which, in your experience, the bid for corn at your farm averaged 9 cents less than the Chicago cash price?

A. Why, it goes 'way back. I started in business as a farm manager down there in 1914. That is the average.

Q. And to what period coming in this direction?

A. Why, it lasted practically until the waterway was put in existence.

Mr. Belnap: That is all.

By Exam. Taylor:

Q. What year was that, Mr. Carper?

A. Is it about three and a half years ago, four years?

Q. I was asking you.

A. I will say three and a half years ago.

Exam. Taylor: Is that all the direct examination of this witness?

Mr. Root: I think so.

Exam. Taylor: Cross examine. Mr. Cole.

Cross examination.

By Mr. Cole:

Q. Mr. Carper, are you a stockholder in any of the river elevators?

A. No, sir.

Q. You don't have any connection with them?

A. I wanted that—tried to get that across, that I am not [fol. 970] an elevator man. I am a producer.

Q. How far is it from these farms that you operate to the nearest water elevator?

A. Oh, some of them are ten miles, some few eight miles, some fifteen miles. I have ten.

Q. Well, the average?

A. The average about ten or twelve miles.

Q. What are the truck charges from your farm to the water elevators, from the farm to the elevator?

A. They are 1 cent, say eight to ten miles.

Q. One cent a bushel?

A. Yes, sir. Out to the limit where I go, it is about 18 miles and I pay a cent and a half.

Q. Have you ever tried to sell your grain from your farm direct to the river elevator?

A. Why, sure. I deal with anybody. I am an independent farmer.

Q. Have you sold any of your grain from your farm direct to the river elevator?

A. I suppose—yes, no doubt I have.

Q. When you have sold your grain from your farm direct to the river elevator, did you also have bids from your elevator man located in Coal City?

A. Not necessarily.

Q. Well, did that happen at any time?

A. No, I don't say that it did.

[fol. 971] Q. When you sell to your elevator man in Coal City, did you at any time receive from him two levels of bids for the same grain?

A. I don't know just exactly what you mean by two levels of bids, but I don't——

Q. Well, you say——

Mr. Root: Let him explain it.

By Mr. Cole:

Q. For instance, this day you referred to when you said your elevator man quoted you 50 cents.

A. That was his bid at the farm on grain that particular day.

Q. Now, at the time that he made you that bid of 50 cents, now that was your elevator man?

A. Yes.

Q. Am I to understand that when you say that that was your elevator man, was that the elevator down at the river?

A. No, sir. That was at Coal City.

Q. That was your Coal City elevator man?

A. Yes, sir.

Q. Now, when your Coal City elevator man made you the bid of 50 cents, did you get in touch with the elevator man at the river to try to get a bid from him?

A. No, sir.

Q. The same day?

A. No, sir.

Q. You got 50 cents from him at the farm for this grain and you checked up later and found that on that same day, [fol. 972] the grain, after it had passed—that is, after it got in Chicago, was selling for 56 cents?

A. Yes.

Q. 6 cents higher than the 50 cents you got laid down on the farm?

A. Yes.

Q. That is correct. Now, have you while you have been operating these ten farms, have you at any time when you were ready to sell grain called up both your elevator men at Coal City and the elevator man at the river?

A. Why, sure, anybody does that. That is nothing more than business.

Q. When you had the grain to sell, have you called up both your local elevator men and your water elevator man at the same time, before you made up your mind which one you were to sell to?

A. Oh, not necessarily. Sometimes I sell at Coal City and sometimes I sell at Kinsman. Sometimes I sell at Morris, Allied Grain. Sometimes I sell at Finnegan Grain. I am an independent farmer, that is all.

Q. The day that you had this 50 cent bid from your Coal City elevator men——

A. Yes.

Q. That very day, before you took him up on selling to him for 50 cents, did you, before you sold it to him, check up to see whether you could get any more any place else? [fol. 973] A. No, sir, I did not.

Q. You just took his 50 cents?

A. Yes, sir.

Q. And what was the determining factor that made you take his 50 cents without checking up to see if you could get more for it some place else?

A. Well, I thought that was a pretty good bid. When a man can bid you in 6 cents of the Chicago market, I think he ought to have the business.

Q. Now, if there were some way by which you could have hauled that grain or had it hauled for you for a cent a bushel to the river elevator, if you paid that cent a bushel to haul it there and if you could have gotten 53 cents, out of which you paid the cent a bushel, would you have been ahead?

A. Oh, possibly.

Q. Now, do you understand what change is being proposed by the carriers here?

A. I believe I do.

Q. What is your understanding of the change that we are trying to make?

A. You are trying to put the ex-barge grain so that it cannot be rebilled out on the Baltimore and New York rate. Is that, in effect, what it is?

Mr. Day: No.

By Mr. Cole:

Q. Which rate?

[fol. 974] A. I am not a rate man. I am just telling you what I understand about it.

Q. What is your understanding of the effect upon you, as a farm operator, of this change, if it is permitted to go into effect? What is in your mind as to its effect on you?

A. I just believe it is going to lower our bid. Naturally, it is going, if you can't ship this grain, particularly at certain times of the year, if you can't ship this grain East without a higher rate, they are going to put the bid down to me.

Q. Then Mr. Carper, if this change that is made or is proposed would not change the price or change those factors which enter into the price that you receive for your grain, am I correct in understanding that you wouldn't have any interest in this proceeding?

A. Well, I don't know; not necessarily. I don't see why—if I was on the other side, why, I couldn't ask a question like that myself. If there is only 16 per cent of this grain going to go through certain channels, why argue about it?

Q. I wish you would answer that question.

A. Well, you have to state it over again.

Q. That you just propounded, Mr. Carper, the one you just propounded. I wish you would give us the benefit of your thought on that very question.

A. I am not going to answer a question of that kind. As I told you, I am a producer. I know from my experience— [fol. 975] I have been in this game 25 years. I hope I am a business man. I don't know that I am, but I try to make a little money on operating these farms, and I know that I am making more now than I did some three or four years ago.

Q. Now, do you understand that anything that the railroads propose here has or is going to have any possible effect upon the ability of the grain to move over the waterway from your vicinity up to Chicago?

Mr. Belnap: Mr. Examiner——

The Witness: I think it is.

Mr. Belnap: Just a moment, Mr. Witness. Counsel shouldn't endeavor to mislead the witness.

Mr. Cole: I am not.

Mr. Belnap: As I understand the proposal of the rail carriers, it is a change in rates which they hope and believe will reduce the volume of grain moving via river. That has been their story, as I understand it. Now, it doesn't seem to me appropriate that any counsel who takes that view of the case should ask a witness a question based on any other premise.

Mr. Cole: May I go off the record a minute?

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

By Mr. Cole:

Q. Mr. Carper, after this change is made that the railroads propose, will there still be available to you the water- [fol. 976] way from this origin around Coal City up to Chicago, via which route you could ship your grain on the water?

A. I believe yes, but I think I will get——

Q. That is it.

A. Wait a minute, I believe I will get less for the grain, though.

Q. And you believe that you would get less for the grain for transportation via water because of the change which we here propose?

A. That is my feeling about it. The Government has developed something down there and it looks like to me somebody is trying to throw a monkey wrench into it.

Mr. Enoch: That wouldn't be big enough.

The Witness: You want to throw a whole train wreck into it and you want to wreck it. That is the idea, then.

By Mr. Cole:

Q. Mr. Carper, you have heard the testimony here so far, you have been present, haven't you?

A. Just since 3 o'clock yesterday.

Q. Did you hear those figures put in the record to indicate how much of this grain moving to Chicago via the water was actually placed upon the proportional rates outbound from Chicago?

A. I heard some figures; I don't know whether I paid enough attention to remember them. What was it, 16 per cent, 20 per cent?

Q. 16 to 20 per cent.

[fol. 977] A. Yes.

Q. Now, you said a while ago you were a business man; you operate 10 farms?

A. I said I hoped I was.

Q. With 16 per cent of the grain that arrives at Chicago via the water, with only 16 per cent of that moving out on proportional rate, how much influence do you think that had on the price you were able to get at Coal City for your grain?

Mr. Root: Your Honor——

The Witness: I think that is a misleading question and I don't want to make an assertion to answer it, but I can't understand why if there is only 15 or 20 per cent going East on the rails, why are you going to stop it. It ain't going to make or break the railroads, the 16 or 20 per cent.

By Mr. Cole:

Q. Did I understand you to say that you couldn't attempt to answer that question?

A. I answered it my way.

Q. And did you say how much influence you thought that that would be upon your price? Would it make a difference of a cent a bushel to you?

A. I believe it would.

Q. Would it make a difference of 3 cents a bushel to you?

A. No, not necessarily.

Q. Would it make a difference of a cent a bushel on every bushel that you sold?

[fol. 978] A. I wouldn't be a bit surprised if it wouldn't, because when you change those rates and you get monkeying with that thing, you just throw everything out of kilter and those fellows will not bid up for the grain, that is all. We producers are going to be just like we always were, left sitting.

Mr. Cole: That is all I have.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Mr. Carper, are you engaged in any other business activity outside of the bank and operating these farms?

A. Nothing else.

Q. Are you interested in any other businesses?

A. I have no—I own these farms, half in my own name, half in my wife's name. I operate that little bank that I wish somebody would come around and take off my hands.

Q. Well, the answer is no?

A. No.

Q. What is the average of these 25 farms that you operate?

A. The ten that we own average—I call them 240-acre farms.

Q. That is simple enough. That is 2,400 acres?

A. Yes. The others average, the fifteen average about, as near as I can remember, 100 to 120.

Q. You gave, I think, the production of corn and beans on these farms that you operate, did you not?

A. Just the ten farms.

Q. Just the ten. And what was that figure?

[fol. 979] A. 50,000 bushels of corn this year, 7,500 beans and 20,000 bushels of oats.

By Mr. Brown:

Q. Was beans 10,500?

A. 7,500.

Q. I thought it was ten.

A. We don't go in very heavily on beans. We probably will next year. The prices went up this year and we hope they will stay up.

By Mr. Day:

Q. Are you able to say what the production on the other farms was, approximately?

A. Well, you know the small farms can't be operated—oh, I sell all the grain for these other parties, oh, I would say we would get 25—say 20,000—of corn and 10,000 of oats, you understand——

Q. That is just roughly?

A. Yes. We don't have much beans on these farms.

Q. Now, taking up these ten farms first. How many are located within a radius of, say, five miles of Coal City?

A. Five of them.

Q. And near what points are the others located?

A. Part of them are northwest of Morris and part—do you know where Kinsman is on the Santa Fe?

Q. Yes.

A. Three of them are south of Kinsman and two north—I mean two south and two north of Kinsman.

[fol. 980] Q. Do you have any near Braceville or Braidwood or Wilmington?

A. No, sir.

Q. The most distant from Coal City is how far?

A. About 18 miles.

Q. How far are thes- 15 farms that you operate from Coal City?

A. Oh, they average—part of them are 15 miles and there is one 21 miles and five of them are just a couple of miles.

Q. 21 is about the most distant is it?

A. It is, yes.

Q. And running through this territory, where these farms are located, are quite a number of railroads, are there not?

A. Yes, sir.

Q. You are not far from Manhattan, are you?

A. I am in Grundy County. Don't confuse me with Will County, or anything. These farms are all in Grundy County. The Rock Island and the Santa Fe is our shipping lines.

Q. Isn't Coal City in Will County?

A. No, sir, it is in Grundy County.

Q. It is close to the line, isn't it, then?

A. It is just one mile or two west of the Will County line.

Q. How long has it been since any of this grain produced on your 25 farms was hauled to a railroad elevator?

A. Oh, every once in a while there is some grain probably hauled to the elevator, even now.

Q. I am trying to find out how long since you had any [fol. 981] such shipments.

A. In large amounts?

Q. In carload lots.

A. In large amounts, it has been—it is just gradually since the waterway started.

Q. In 1925?

A. Gradually, since it started, and there has been more competition, why, the business has gone to the waterway since it started.

Q. I see. Now, you are not very far from Joliet, are you? About twelve miles or so?

A. 24 miles.

Q. 24 miles?

A. Yes, sir.

Q. To what elevator is your grain sold on the river?

A. Both elevators?

Q. Both elevators in Morris?

A. Yes, I told you I was an independent business man.

Q. You make the sales direct to the elevator on the river?

A. I sell direct sometimes, but usually quite a bit of the grain goes through, as I said before, and I got the 50 cent bid and it was only 6 cents below the Chicago market; the local elevator man got it.

Q. The local elevator man at Coal City?

A. Yes, sir.

[fol. 982] Q. And he handled the transaction?

A. Yes, sir.

Q. Although he didn't actually handle the grain, he took care of the buying and selling for you?

A. His trucks, the trucks that he hired took the grain wherever he wanted it. I didn't ask him where it went.

Q. I mean it wasn't handled through his elevator?

A. I wouldn't say necessarily it wasn't handled through his elevator. Sometimes the river elevators get blocked up and they have to fill up the local elevators.

Q. Is his elevator being used for Government corn storage?

A. I believe not.

Q. Is his elevator in operation at the present time?

A. Yes, sir.

Q. When you talked about trucking to Coal City for a cent and a quarter, you didn't mean to give the impression that there was actually trucking to Coal City being done from your farms? That is what the charge would be if there were any?

A. Well, you probably didn't—maybe I didn't make myself clear. When I said a cent and a quarter, I meant that the elevator man in Morris—it depends upon the distance that the particular farm is from the waterway. Sometimes it is a cent and sometimes it is a cent and a half, so my farms average, it would average about a cent and a quarter.

Q. To the elevator at Morris?

A. Yes.

[fol. 983] Q. In your direct, as I understood you, you said that the trucks would haul the grain from your farms to Coal City for about a cent and a quarter.

A. Well, I think they would.

Q. Now, it was at that point that I wanted to find out from you what these distances were to Coal City and your counsel objected and said that I should reserve that question to the cross examination. Now, I find that what you had in mind was the trucking to the elevator at Morris.

A. All right, I will go——

Q. Isn't that right?

A. Yes, sure.

Q. Now, are these 15 farms that you operated, that you are operating, farms that came to the bank because of mortgage foreclosures?

A. No, sir.

Q. None of them are?

A. None of them.

Q. Are they farms that are being operated because of foreclosures and you are operating them for somebody else?

A. No, sir.

Q. Have the owners had title to these farms for a considerable period of time?

A. Yes.

Q. And there has been no foreclosure in connection with them?

[fol. 984] A. No, sir.

Q. How about these ten farms that you own, did you acquire any of those under foreclosure?

A. No, sir.

Q. Did your wife?

A. No, sir.

Q. You are sure of that?

A. Yes.

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Well, did you get them from anyone who had just acquired them under foreclosure?

A. There is possibly one, and I paid a whale of a price for the land, too. I should have let somebody else have it.

Q. How long have you been in Coal City?

A. Just before the World War started; just before 1914. Some time in 1913, latter part of 1913.

Q. Where was your home prior to that?

A. Chicago.

Q. Chicago?

A. Yes, sir.

Q. Have you lived in Chicago all your life, prior to then?

A. No.

Q. Prior to your living in Chicago, where did you live?

A. Well, I don't think that has anything to do with this [fol. 985] case, do you, Mr. Examiner?

Mr. Enoch: All right, I will leave it right there. That is all I have.

Exam. Taylor: Anything, Mr. Brown?

By Mr. Brown:

Q. Mr. Carper, as I understand your testimony, you do not ship yourself from Coal City, your own grain from Coal City by rail to Chicago or from Morris by water to Chicago?

A. No.

Q. You sell it to them on any bid and deliver it there and then you are through with it?

A. Absolutely.

Q. And you don't know what happens to it after you have got your money and delivered it?
A. No, sir.

Mr. Brown: That is all.
Exam. Taylor: Anything further of this witness? Anything on redirect?

Redirect examination.

By Mr. Root:

Q. Mr. Carper, you might tell these gentlemen who owns most of these 15 farms, or all the 15 farms you operate.
A. I don't know that it makes any particular difference.

Mr. Brown: Does he want to sell them?
The Witness: No, we are using them up for strip mines.

By Mr. Day:

Q. For strip mines?
[fol. 986] A. Yes.
Q. Coal City is in the heart of the Wilmington coal district?
A. Yes, and the Santa Fe Railroad ought to be glad they are there.
Q. They certainly ought to be glad to get some business.
A. Well, they sure do get business.

By Mr. Root:

Q. As a matter of fact, you are farm manager for the Northern Illinois Coal Company and you operate it for them, you operate it until the time——

Mr. Day: Wait a minute, he said he had no other business connection. Now, you are saying he is the manager of the Northern Illinois Coal Company.
Mr. Root: No, I said he managed these farms. I am trying to help you out on it.
Mr. Day: You are making statements that the witness would not make himself. I asked him if he had any other business connections.
The Witness: I haven't. I operate these 15 farms. There is one outside that doesn't belong to the coal company. There are ten of my own, one that belongs to some

relation of my wife. There is about, oh, maybe there is 16 coal companies on it.

Mr. Day: But as Mr. Root suggested, you are manager for the Northern Illinois Coal Company.

The Witness: Their farm manager. I have nothing to [fol. 987] do with the operation of the mines.

Exam. Taylor: Did you finish?

Mr. Root: No, I want to ask one more question.

By Mr. Brown:

Q. Do you lose your job when they start to mine coal, Mr. Carper?

A. No, several people tried to get the little job away from me.

Q. But I mean when they start to mine coal, you lose your job?

A. No, they buy this land, pay for it. They turn it over to me to farm it. I farm it just like it was my own and get the receipts and turn them in to the Chicago office.

Mr. Root: Are you satisfied, Mr. Day?

Mr. Day: I am satisfied you brought out he did have some other business connection he withheld from me.

The Witness: That is absolutely wrong.

Exam. Taylor: Off the record.

(Discussion outside the record.)

By Mr. Root:

Q. Mr. Carper, you stated that you sold some grain to a river elevator at Morris. Is any of that sold to the Allied Group or Co-operative Grain Dealers Association in Morris?

A. Not direct, no.

Q. Who do you sell to in Morris?

A. I sold it to the Farmers Square Deal. I have sold to Finnegan Grain Company.

[fol. 988] Q. But you have never sold any grain directly to the Co-operative Allied Grain Dealers Corporation?

A. No, sir.

Mr. Brown: That raises another question.

Recross-examination.

By Mr. Brown:

Q. Did you have to deliver it to the Allied Co-operative Association's elevator at Morris?

A. I didn't sell it to them. I sold it to the local elevator out in the country and he done whatever he wanted to with it.

Q. To whom did you deliver the grain?

A. Why, to the elevator. I didn't deliver it—the bids. Now, some of these little elevators, you take at Kinsman, the Dunne Elevator Company, he bids me today—I don't know what the market is today. Say he bids me 51 cents for No. 2 yellow corn. That is on the farm. I don't know what he does with it, necessarily. I am not interested in it as long as his credit is good, that is all I am interested in.

By Exam. Taylor:

Q. So the answer is, you deliver the grain to trucks on your farm?

A. Yes.

Q. Whoever buys it brings a truck in and takes the grain there and that is the end of the transaction, as far as you are concerned?

A. Yes.

Exam. Taylor: Does that answer your question, Mr. Brown?

[fol. 989] Mr. Brown: Yes, but I would like to know on what basis does he get this 51 cents, based on the outturn weights or the delivered weights at Morris elevator, where the grain is delivered, to Finnegan's elevator or some other elevator.

The Witness: If it is delivered at Finnegan or the Allied or his own elevator, I take the weights that he certifies.

By Mr. Root:

Q. Whose check do you get in payment of that grain?

A. If I sold it to the Dunne Elevator Company?

Q. Yes.

A. I get their check.

Q. You get the Dunne Elevator Check?

A. Absolutely.

Q. If you sell it to the Square Deal Grain Company, whose check do you get?

A. Square Deal's.

Q. If you sell it to Treasure, whose check do you get?

A. That is Bookwater.

Q. Or Bookwater?

A. I get Bookwater's check.

Exam. Taylor: Any further questions on redirect?

By Mr. Cole:

Q. Did I understand you correctly to say you sold to the Finnegan Grain Corporation? Do they have a buying agency or an elevator right near you at Coal City?

A. No, sir, they have a grain elevator in Morris.

[fol. 990] Q. And you have sold some grain to this Finnegan Grain Corporation?

A. Why, sure.

Q. And when you sold to them, did they too send the trucks to your farm to get the grain?

A. Not necessarily.

Q. Well, have you ever hauled grain or had grain hauled from your farm direct to the Finnegan Grain Corporation at Morris, Illinois?

A. Morris, Illinois? Sure.

Q. You have had grain hauled, then, from your farm?

A. Why, sure.

Q. Direct to the elevator at Morris?

A. Yes.

Q. That you sold to the Finnegan Grain Corporation?

A. Sure.

Mr. Cole: That is all.

Mr. Brown: Mr. Cole, I believe on the record, that elevator is sometimes known—located at Patonville, is that right?

Mr. Root: For the purpose of the record, it might be well to state that it is the same.

Mr. Brown: Patonville and Morris are the same?

Mr. Root: Patonville is an unincorporated town on the south bank of the Illinois River.

[fol. 991] Mr. Brown: And that is where Finnegan & Company's grain elevator is located?

Mr. Root: It is not there, but it is near there.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused. Thank you.

(Witness excused.)

Exam. Taylor: We will recess until 2 o'clock.

(At 12:30 o'clock P. M., Thursday, December 21, 1939, hearing adjourned until 2 o'clock P. M.)

[fol. 992] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Taylor: All right, gentlemen, let us come to order. Next witness.

Mr. Root: I call Mr. Hatcher.

Paul Hatcher was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. Paul Hatcher.
Q. Where do you reside, Mr. Hatcher?
A. Morris, Illinois.
Q. In town or near the town of Morris?
A. Near the town of Morris.
Q. As a matter of fact, about a mile or a mile and a half west of town?
A. That is right. Our farm land runs up to the city limits.

Mr. Brown: Does that make you a farmer?
The Witness: Yes, sir.

By Mr. Root:

Q. And farming, is that your business and occupation?
A. That is right.

Q. Are you engaged in any other line of endeavor?
[fol. 993] A. Farm management and farming and livestock raising, is all.

Q. Do you feel that you have an interest in this case here today?

A. I do.

Q. And have you prepared a statement which you would like to make in order to expedite the hearing?

A. That is right.

Q. Will you proceed and make your statement?

A. I have prepared a statement, Mr. Examiner, and this is regarding to the history of our farm, which we got from the United States government under original land grant and which was signed by the President of the United States and dates back to 1831 and I would like to read this statement, if I may, without any interruption and afterwards I will be glad to answer any questions that I can, just to hurry this thing along.

Mr. Brown: Before you start, was it your great grandfather that got that land?

A. Great, great.

Q. Great, great grandfather?

A. Yes, sir.

Mr. Brown: All right, go ahead.

The Witness: In the late 1820's Josuah Hoge and his two sons, traveling over land on horseback, rode into what is now Grundy County and staked out their claim. This land bordered by the Illinois River to the south was [fol. 994] selected by them for its fertility and adjacency to the river, which body of water as early as the seventeenth century was used as a means of entry into unexplored country. Three years later, in 1831, they brought their families by covered wagon to this early homestead. Here, high on a timbered hill, they built their home overlooking the cleared fields of river bottom land and the Illinois River which they expected to furnish a valuable means of exportation of produce and importation of necessities. However, by 1836 work was begun on a canal to be known as the Illinois and Michigan canal, which was to serve as a cheaper and surer means of transportation. After delays of several years due to a lack of funds work was renewed in 1846 and in April of 1848 the canal was open

for navigation. Again Josuah Hoge's choice of land was vindicated, for the canal bordered on the north of his vast corn fields and it ran not 25 rods from his house. By this time the home place was managed by Josuah's oldest son, Isaac and his wife, Mary Jane. As day by day loaded barges moved up and down the canal and the towpath became well trodden by the laboring mules, Isaac conceived the idea of building a granary in which to store grain bought for reshipping via this direct and inexpensive waterway. He chose a site north and above the canal bank, easily accessible to unloading by oxen, mule or even force of gravity. For many years the well filled barges passed by the farm laden with grain for markets in Chicago and even farther east and the farmers profited by this means [fol. 995] of shipping with its accessibility and low rates. As the granary filled and emptied Isaac Hoge improved his own farm and that of his tenants. Early in the 1850's news arrived of the chartering of a railroad to run direct from the Mississippi River at Rock Island to Chicago. Again Isaac's land was invaded by working crews. This time a narrow strip of land through his farm was surveyed and leveled, ties were laid and rails spiked. In July of 1854 the Chicago, Rock Island Railroad opened. Cognizant of the greater speed and recognizing a forward move in transportation, some of the farmers began shipping by rail. As the railway service developed commerce was diverted from the canal. Fewer and fewer barges passed by the house and more and more of the grain was shipped by rail. The farm passed into the hands of John Hatcher, husband of Isaac and Mary Jane's daughter Caroline, and thence to their son Frank. By now business on the canal was negligible and when Frank Hatcher died in 1930 the canal as a means of transportation was non-existent; the canal bed was shallow and muddy and the old towpath overgrown with underbrush. In 1908 I think the last barge of grain was shipped from Morris by the canal by a farmer named Collins. But its successor, the railroad, was far from satisfactory. True, the service was rapid but the rates, so we farmers felt, were unreasonably high. Again we turned to our old ally—water. The canal was out of the question but what of the river? Could not transportation by river be made practicable? Recognizing the necessity for [fol. 996] such a change the Illinois Deep Waterway came into being. Back to shipping by water went the farmers,

water with its cheaper rates and along the Illinois River at the various towns local elevators were built handling millions of bushels of grain yearly, local businesses were made possible by the deep waterway. Working with the waterway is the recently developed trucking business. In conjunction the two can offer the farmer more satisfactory and more reasonable shipping into and through Chicago. Water had been the most satisfactory method for past generations and it is found to be so today. Through the decades the original Hoge lands have been split up among the several heirs but the early homestead remains and is now owned and occupied by me. From my farm proper are shipped on a yearly average some 10,000 bushels of corn. Water was originally the most practiced method of shipping for the farmer and still proves itself to be. The railroad has served a useful purpose in developing the Illinois valley but as it drew the business away from the Illinois and Michigan canal so must the railroad in part, at least, give up to the newer and cheaper mode of transportation, the truck and the Illinois waterway. My farm has been here for over one hundred years. It has seen the explorers, the pioneering homesteaders, the rise and decline of the Illinois and Michigan Canal, the penetration of the railroad, the return to water. From the original home you can today look beyond the obsolete canal to the Illinois River where daily barge convoys carry the farmers' prod- [fol. 997] uce upstream and downstream to the markets.

By Mr. Root:

Q. Now, Mr. Hatcher, is that grain now produced on your farm, as you state, an average of 10,000 bushels of corn per acre?

A. A year.

Q. 10,000 bushels a year. That would be a nice farm. Have you sold that during the past three or four years to operators who ship it to Chicago by water?

A. Yes.

Q. Have you noticed any appreciable advantage in price as a result of that transportation?

Mr. Enoch: I object unless he cites the basic factors from which he announces his conclusion.

By Mr. Root:

Q. All right, cite the factors? Has there been any advantage in price to you during the past four years?

Mr. Enoch: I object except as the answer is based upon specific factors from which the Commission may draw a conclusion.

Exam. Taylor: Can you go back a few years and show what it was and bring it up to date?

By Mr. Root:

Q. And as compared with the Chicago cash grain market will you compare the price which you have received in Morris during the past three or four years as to what it was before the Illinois waterway was useable?

A. I believe that my farms and the farms that I operate have benefited to the extent of between four and five cents a bushel.

[fol. 998] Mr. Enoch: I move that that answer be stricken.

Exam. Taylor: It is hardly responsive to your counsel's question.

Mr. Root: Read that question to him again and try to answer the question, please.

The Witness: Yes, I had a couple of interruptions there.

(Question read.)

Q. I am speaking of the price of corn, of course. In other words, how much closer, if at all, are you getting to the Chicago cash grain market than you did before you had the waterway facility there?

A. Well, I think before we had the waterway facilities,—I think now we are about four cents——

Exam. Taylor: No. He asked you before you had the waterway facilities what was the difference between the price you got at your farm and the price that the corn was selling at on the Chicago exchange?

The Witness: About nine cents approximately.

Exam. Taylor: All right.

By Mr. Root:

Q. And what is the difference now since grain can be shipped over the waterway, Illinois waterway from Morris?

A. Well, I think it is about—the difference is about 4 cents.

Q. No, I mean—pardon me.

Mr. Enoch: Those answers are not responsive to the question. In the first place, I don't think this witness ships [fol. 999] over the waterways. At least, he has not said that he did.

Exam. Taylor: Can you develop that, Mr. Root?

Mr. Root: Yes. I asked that question once.

Q. Has the grain that you raised on your farm during the past three or four years been shipped to Chicago over the Illinois waterway?

A. I answered that before that it had.

Mr. Enoch: My point was that he hasn't said that he ships grain over the Illinois waterway.

The Witness: Well, I have shipped the grains over the Illinois waterway.

By Mr. Root:

Q. Just a minute. Do you personally ship it or do you sell it to a dealer who in turn ships it?

A. I sold it to the grain dealer in Morris and it was shipped over the deep waterway.

Mr. Enoch: You ought to be interrupted more than you have been, I suspect, to keep you straight.

By Mr. Root:

Q. Well, now, have you sold any grain this fall, Mr. Hatcher?

A. Yes, I have.

Q. Can you state the difference between what you received for that grain in Chicago and what the Chicago cash market was at that time?

Mr. Enoch: I object. The ground of my objection is this, that if there is any merit in that question it should [fol. 1000] be based upon a question directed to what he did sell his grain for and what the Chicago cash price or future price was at the time he sold it.

Mr. Root: I don't see that that is material. It is a matter of difference there.

Exam. Taylor: Well, I think they have been pretty kind to you. I think you can develop that easily enough if you wish.

By Mr. Root:

Q. At what price did you sell that corn?

A. The day before yesterday I sold Mr. Allen of the Farmers Square Deal elevator, 2,000 bushels of corn for 53½ cents a bushel. That was after the market closed. That same night,—I have a farm in Beaverville, Illinois,—over the telephone that was, after the market closed, I sold 1800 bushel more or less,—both of these was more or less,—at the price of 50 cents. That is off the deep waterway and they are both 65 miles from Chicago.

Mr. Day: Yes, but Beaverville is near the Illinois-Indiana state line, isn't it?

Mr. Root: Just a minute.

Q. Was the grain from the Beaverville farm shipped to Chicago by water or rail?

A. Rail.

Q. Or shipped to market, wherever it was shipped, if you know?

A. Rail. They have no water facilities over there.

Q. They do have water facilities in Morris?

[fol. 1001] A. That is right.

Exam. Taylor: Is that all?

Mr. Root: I believe that is all.

Exam. Taylor: Any questions by counsel?

Mr. Belnap: I have none.

Exam. Taylor: Cross examine. Mr. Cole?

Cross-examination.

By Mr. Cole:

Q. Mr. Hatcher, you related the fact in your direct that that farm had always been located on what you termed the cheaper water transportation facilities, didn't you?

A. I said it was located on the Illinois River, yes, sir.

Q. Do you understand that anything that we do here will defeat your right or ability to handle that grain from Morris up the waterway facilities to Chicago?

A. I don't know what will happen but I hope nothing happens to it.

Q. During the total time that that farm has been in your family's possession, and is there not still existing the possibilities of lake transportation from Chicago over the Great Lakes system to the east?

A. Well, I imagine there is possibilities there. The water is there.

Q. Is that form of transportation not that same form of cheaper water transportation to which you referred in your direct testimony?

[fol. 1002] A. I don't know anything about transportation rates on water or railroads. All I know is that we have been very happy to be able to get more money for our grain by shipping it on the deep waterway from our farm.

Q. Then no matter what the railroads do can you conceive of there being denied you the opportunity of moving your grain from Morris over the Illinois waterway to Chicago and then moving your grain or route that grain to move over the Great Lakes system and the Welland Canal clear out east over water all the way?

A. Well, I don't know anything about. I wouldn't——

Q. Well, can you conceive of the railroads being able to defeat the possibility of your grain moving that way?

A. Well, I can't answer that. I am just a grain producer. I don't know anything about railroads or any other kind of shipping or anything like that. I am not interested in that.

Q. Do you know whether the cost of transportation today beyond Chicago is—do you know whether it is cheaper or more expensive east of Chicago via water than it is by the use of this rail rate that we are talking about?

A. All I know is what I have heard since I have been sitting here to testify, just what I have heard in this room, that is all I do know or did know before I came up here.

Q. Then you are unable to say whether it is more expensive to handle it east of Chicago via water?

A. That is right.

Q. You don't know whether it is or not?

[fol. 1003] A. That is right.

Mr. Cole: That is all, thank you.

By Mr. Day:

Q. How many acres do you operate at Morris?

A. Well, sometimes I operate more than others but I live on one farm of 600 acres.

Q. That is the original family farm, I understand?

A. That is right; and I operate sometimes six or seven other farms, sometimes four or five, and they are all good sized farms that will average about 350 acres.

Q. You operate these six or seven farms for other people?

A. Our family.

Q. They are all members of your family who are living in the city now?

A. Well, yes, away from home.

Q. These six or seven other farms were acquired since the original patent from the government to your great, great grandfather?

A. Yes.

Q. Now, you say that you own a certain property at Beaverville, Illinois?

A. Yes, sir. We have owned that since 1878.

Q. And Beaverville, of course, is directly south of Chicago, 65 miles, about, as you have stated?

A. Approximately, yes, sir.

Q. And pretty close to the Indiana-Illinois state line?

[fol. 1004] A. That is right.

Q. Yes. And Beaverville is in the heart of a very good grain producing section, isn't it?

A. With the exception to the east it is very poor. That used to be an old lake bottom and it is wet. That is where those great, big drainage ditches go through.

Q. Well, it is pretty good along the Big Four Railroad which operates through Beaverville, there is very good farming country? You take all that from the south of Kankakee through Beaverville and St. Anne, Donovan and Iroquois, that is very good country, isn't it?

A. I would say it was average, yes, sir.

Q. And you are selling grain off that Beaverville farm from year to year, you say?

A. I sell some, yes, sir.

Q. Now, do you own other farms besides that one?

A. That is the only farm we own in Iroquois County, yes, sir.

Q. Well, do you own some in Will County?
A. No, just Grundy County and Iroquois County.
Q. And Vermilion County?
A. No. Just Grundy County and Iroquois County.
Q. And where you sell the corn produced on the Beaverville farm you haul it to the elevator in town there, do you?
A. You mean me personally?
Q. No.
A. We sell it.
[fol. 1005] Q. Your representatives, whoever they are.
A. Yes. Well, we sell that—I sold that over the telephone like I told you a minute ago, the other night and my tenant handled it. He has to hire the trucks and have it hauled to the elevator, to the local elevator in Beaverville.

Mr. Day: Off the record.

(Discussion outside the record.)

Q. Now, you say that from this Beaverville farm the grain is taken to the country elevator on the railroad?
A. That is right.
Q. And it is shipped out by rail?
A. That is right.
Q. Now, in the case of this particular sale that you made at Beaverville a few weeks ago, do you know where that grain went?
A. No, I do not.
Q. Whether it went east or south or north? You have no idea?
A. No, I have no idea at all. You see, that was handled by the local elevator man there.
Q. Your interest in it ended when you sold it to the elevator?
A. That is right.
Q. And by the same token doesn't your interest in your river grain end when you sell it to the elevator?
A. That is right. I don't know where the corn goes. I sell it and get the check and do something with it.
Q. Now, as I understand it, you received a different price [fol. 1006] at Beaverville from what you did at Morris?
A. That is right.
Q. And what were those prices?
A. 50 cents at Beaverville.
Q. Yes.

A. And 53½ cents at Morris.

Q. On the same day?

A. Yes, and after the market had closed.

Q. Well, did you get the market for that day or for the next day, do you know?

A. I don't know.

Q. Was there a fluctuation over-night, do you know?

A. Well, as I understand it—I don't know very much about the Board of Trade, but they closed. After it is closed I think it is closed. There isn't any fluctuation after the market is closed.

Q. Well, what I mean is do you know what the close of the market was on that particular day in Chicago?

A. No, I don't, no, sir.

Q. And what was the date?

A. Day before yesterday.

Mr. Root: December 19th.

The Witness: Yes.

By Mr. Day:

Q. You are not able to say, I take it, whether the sale at Beaverville or Morris was made on the market for that day or for the following day?

[fol. 1007] A. No, I cannot.

Q. Do you know the ordinary practice in the trade?

A. No, I do not.

Q. You don't know whether they give you that day's price or the next day's?

A. Oh, they would have to give you that day's price but they must have—I don't know what market the corn was sold on.

Q. There may have been a fluctuation that would make a difference in the price on one day and the next, might there not?

A. There might have been but it would affect both towns, would it not?

Q. Well, it depends on how they do business at each place, doesn't it?

A. I don't know how they do business. All I know is—you asked me what the price was and I told you I sold it after the market had closed.

Q. Well, don't you know what price you would ordinarily get in a case like that, where you sell it after the market is closed?

A. All I know is when I ask the local elevator what he is bidding for corn?

Q. What grade of corn was sold in each of those cases?

A. I can't tell you because it had to grade 2 or better to get the price that I sold it at, see. That means—that 53½ cents meant that the corn would have to grade at least 2. Of course, after that they dock you for it.

Q. How about this corn at Beaverville?

[fol. 1008] A. The same thing. That is the understanding, that it grades two or better to maintain that price.

Q. The prices you ultimately got were these figures that you stated?

A. Sir?

Q. The prices you actually got were the figures that you just stated? There was no docking was there?

A. Well, you see, I sold that corn and I immediately came up to Chicago and I have been here ever since. I don't know what it did grade.

Q. They may have docked you something under the figures that you gave?

A. Well, it is possible but under the conditions that we have had this fall all grain has graded well up there. In fact, I sold some grain that graded number 1.

Q. Is your land in Morris along the river bank?

A. Yes.

Q. Might there be some difference in the quality of the corn in both sections?

A. On the river bank the corn graded better this year.

Q. Yes.

A. Yes, sir. I sold——

Q. So that it might have been a better quality of corn?

A. The corn quality will be the same in both places, should be the same in both places. Yes, sir, it could be.

Q. Well, you say you raised an exceptionally good qual-

[fol. 1009] ity of corn along the river this year?

A. We have, yes.

Q. Along the river?

A. Not along the river but every farm. This was a wonderful corn year. All our corn has graded 2 or better that I have sold so far.

Q. When will you know what the result of the grading is as to these two lots of corn?

A. As soon as I get back home and find out from those local elevators, or when they send you a check. Like Beaverville, they always tell you what your corn graded.

Q. At the present time you don't know positively what price you got for these two lots of corn?

Mr. Belnap: Mr. Examiner, I suggest that question has been asked and answered more than once.

Mr. Day: I just want to make sure I am clear.

Mr. Belnap: He says he doesn't know until he gets back home.

Mr. Day: I understand that when it is graded there may be some docking on account of the grade.

Exam. Taylor: He said that.

Mr. Day: Just so I am clear on that.

Q. That is the fact, isn't it?

A. I have answered that. Yes, that is it.

Mr. Day: That is the fact. That is all.

Exam. Taylor: Mr. Enoch?

[fol. 1010] By Mr. Enoch:

Q. How much grain have you personally shipped via the Illinois and Michigan canal?

A. None.

Q. How long ago did you start shipping grain on your own account?

A. Since my father died in 1930.

Q. Well, how long have you been familiar with any operations on the Illinois and Michigan canal?

A. You see, before I mentioned in this that year 1908 and I was eight years old then, the last barge went through, so I haven't been very familiar personally with it.

Q. Where did that barge come from and go to, do you know?

A. This barge, the last barge that went out of here that I told you about, in 1908, was locally owned and it went in to Chicago. The load of grain, that was a load of grain that originated on this man's farm and he happened to own the barge, too, and it went into Chicago.

Q. How many bushels was that?

A. I couldn't tell you.

Q. Well, was it a thousand or two thousand?

A. Oh, no, it would be, I imagine—I am kind of taking a guess at this, I wouldn't be held for this, but I think it would hold approximately 5,000 bushels of grain.

Q. 5,000. Now, you said that back in 1836, when they built this Illinois and Michigan canal, that it provided cheaper transportation. From where and to where and [fol. 1011] cheaper than what other kind of transportation?

A. Well, our family have shipped grain by oxen and hauled it to Chicago. It was pretty expensive and slow.

Q. You mean prior to 1836?

A. Well, I don't know the date. And the canal,—you know they had pretty good service for its day. It was towed by mules and they had good service. You see, these granaries were built on the canal and they were built up high and they unloaded right from a wagon and that from there it ran down into the barge with very little labor bill attached to it, practically the same thing they are doing now, only they mechanically raise the grain.

Q. What you intended to say was that in 1836, after the Illinois and Michigan canal became available as you say, you could get your grain cheaper to Chicago than you could by taking it up by oxen?

A. Oh, yes.

Q. That is what you meant to say?

A. Yes.

Mr. Root: May I say something, Mr. Examiner? 1836 is not right. It was 1846 when the canal was built.

The Witness: I gave him the correct date on that before. I noticed him say that. In 1836 the canal wasn't finished.

By Mr. Enoch:

Q. What do you say in your statement there about 1836, cheaper transportation?

[fol. 1012] Mr. Root: That is when it was started.

A. That is when it was started. However, by 1836 work was begun on a canal to be known as the Illinois and Michigan canal, which was to serve as a cheaper and a surer means of transportation.

Exam. Taylor: That is sufficient.

By Mr. Enoch:

Q. Well, it was cheaper in 1846 then?

A. And in April, 1848, the canal was opened for navigation.

Q. 1848?

A. Yes, sir.

Q. Now, the statement read then, that you referred to, to the year 1848, transportation via the Illinois and Michigan canal, grain from Morris to Chicago was cheaper than if you brought it in by oxen?

A. Yes, sir, that is right.

Q. And then the railroad came along?

A. That is right.

Q. And did your ancestors continue to use the Illinois and Michigan canal after the railroad began service from Morris to Chicago?

A. We used the deep waterway——

Q. Just did your ancestors now, that is all I am talking about.

A. That is what I mean when I say "we." All right, my ancestors used the canal till the railroad broke them.

Q. Yes. Did you use the railroad?

A. Yes.

Q. How long did you use the canal after the railroad had [fol. 1013] service from Morris to Chicago?

A. Well, I imagine we used it till about 1900.

Q. That is based on your imagination?

A. I don't have the records for sure, no, sir.

Q. And the railroad broke the canal or broke your ancestors?

A. No, it didn't break our ancestors but it stopped the shipping on the canal.

Q. Why?

A. Because of railroad transportation.

Q. Was cheaper?

A. Faster.

Q. Was it cheaper?

A. I don't know about that, whether it was cheaper.

Q. You don't know whether it was cheaper or not?

A. No, I do not.

Mr. Root: I might suggest I will send up the history of Grundy County if counsel would like to read it.

Mr. Brown: You had better look out. He is a farmer boy himself.

By Mr. Enoch:

Q. I am not sure whether you stated whether this 53.5 cents per bushel that you got on the 19th day of December was an f.o.b. farm price or an f.o.b. river elevator price.

A. That was at the farm.

Q. To whom was that sale made?

[fol. 1014] A. To the Farmers Square Deal, Morris, Illinois.

Mr. Enoch: That is all.

Exam. Taylor: Mr. Brown?

By Mr. Brown:

Q. Mr. Hatcher, are all the prices that you get for your corn raised on your farm in Grundy County near the river by the bids at your farm rather than through the elevator?

A. They have been in the last,—oh, I would say two years.

Q. Well, now, this bid that you got, 53½ cents, for what would be number 2 yellow corn or better, on the 19th instant, December 19th, did you get as good a bid as that at any time in December prior to December 19th from the Square Deal or the Allied?

A. Will you please state the last half of that again?

Q. Yes. Have you had as good a bid or a better bid than 53½ cents at any time during this month prior to the 19th from either the Square Deal or the Allied?

A. Well. I really didn't get a bid from them. I went in there and asked the price of grain, I have been watching it kind of close, naturally, and when it hit 53½ cents I sold it.

Q. All right. Have you sold any grain to either one of those two people at any time prior to December 19th that netted you better than 53½ cents?

A. No.

Q. Did you have any that netted you within a cent of 53½ cents?

A. No.

Q. Did you have any that netted you within a cent and a [fol. 1015] half of 53½ cents?

A. No.

Q. Two cents of 53½?

A. No.

Q. What was the best bid that you had prior to December 19th during the month of December this year?

A. I sold some grain to make space, I think it was the last of November, I don't know; I sold some 6,000 bushels of corn at 46 cents. Is that what you meant, Mr. Brown?

Q. Yes. Of course, that happened to be in November instead of December?

A. That is right.

Q. Late in November, I presume?

A. That is right.

By Exam. Taylor:

Q. To whom was that sold?

A. The same elevator.

Q. The Morris elevator?

A. Sir?

Q. The Morris elevator?

A. Yes, the Farmers' Square Deal at Morris, Illinois.

By Mr. Brown:

Q. Now, you took us back, you know, to ancient history, back to the oxen and covered wagon days. And beginning in 1848 you could ship via the Illinois and Michigan canal, at least your forebears did?

A. Yes.

[fol. 1016] Q. Now, what makes it possible for you to use the Illinois—that is, your grain is shipped now,—what makes it possible for transportation over this Illinois waterway of your corn today after this lapse of years from, say, 1900 up to, say, 1939? What means has brought that about?

A. Well, I guess the railroads.

Q. Oh, no. I am talking about shipping over the Illinois and Michigan——

A. I don't quite get your question clear, I guess.

Q. Well, I will make it plainer. Where did the money come from that made transportation possible on the Illinois waterway that is now used in the transportation of your corn to some place,—Chicago or some place?

Mr. Root: Your Honor, I object. It is outside of the scope of the direct.

Mr. Brown: I am talking about after the Illinois and Michigan canal.

Mr. Root: I have got no objection but it has nothing to do with his direct examination.

Mr. Brown: If he doesn't know it is all right.

Mr. Root: He knows.

The Witness: As I understand the situation, about twenty million dollars went into the deepening of the Illinois waterway and then when their funds ran out the United States government took it over as a federal project and finished it in about the year 1934.

[fol. 1017] By Mr. Brown:

Q. And the expenditure of that money made it possible for somebody to buy your grain and ship it by water is that right?

A. That is right.

Mr. Brown: That is all.

Mr. Day: I have just one question I would like to ask the witness.

Mr. Root: I would like to have him on redirect first.

Mr. Day: This is just one question on cross that I omitted to ask.

Q. Did you have any government loan on your corn during 1939?

A. No.

Q. 1938?

A. I have never had a government loan.

Q. Never had any?

A. No.

Mr. Brown: He doesn't need any.

By Mr. Enoch:

Q. May I ask you a question? I neglected to ask you about the oats that you produce. Do you raise any oats on your farm?

A. Yes, we raise oats.

Q. How much?

A. I don't know how many bushels we raised, like that. We average it up. We don't ship it.

Q. Have you never shipped any oats?

A. No, sir.

[fol. 1018] Mr. Brown: Are you one of these old fashioned farmers that still use horses and mules?

The Witness: We still farm both ways.
Mr. Day: You mean with both horses and the oats?

By Mr. Enoch:

Q. What does your oats production amount to?
A. Well, I imagine each farm has a different program, you know, or allotment, but we will probably have a hundred acres of oats on each farm and it grows about an average of 40, 50, 60 bushels to the acre.
Q. And you have never within the past ten or twenty years, you have never shipped any oats?
A. No.
Q. You use it on the farm, you use your entire production on the farm?
A. That is right.

Exam. Taylor: Is that all, Mr. Enoch?
Mr. Enoch: Yes.
Exam. Taylor: Redirect?

Redirect examination.

By Mr. Root:

Q. Mr. Hatcher, the corn which you sold to the Farmers Square Deal Company on December 19, 1939 was what grade?
A. Number 1.
Q. I mean what did you sell it at? When Mr. Allen told you the price was 53½, what was that for?
A. That was for corn that would grade number 2.
[fol. 1019] Q. Or better?
A. Or better, yes, sir.
Q. Now, what was the bid of 50 cents per bushel given to you for down in Beaverville, Illinois, what grade of corn?
A. The same grade, 2 or better.
Q. And you sold the same class of grain regardless of how it eventually grades, is that right?
A. That is right.

Mr. Brown: Are you going to ask him about his November bid of 46 and a fraction?
Mr. Root: I don't know what the market was in November.
Mr. Brown: Well, I am going to ask him if you don't. I think I have a right to.

Mr. Enoch: If your Honor please, I would like to ask counsel if I am to understand now that the amount received was different from the bids?

Mr. Root: Off the record here.

Mr. Brown: All I want to know is this——

Mr. Root: All right, go ahead.

Mr. Brown: He said that his corn was of good quality and he sold it at a certain price, number 2 or better. You have taken him on his 53½ bid and you have taken him on his 50 cent bid. Now I want to find out if the bid that he got in November, which was much less than he got these other two times, was also for number 2 corn?

[fol. 1020] The Witness: That is right.

By Mr. Root:

Q. Mr. Hatcher, there was a question asked you in regard to whether or not you had shipped over the Illinois and Michigan canal and you, of course, stated that you had not because of your age. Now, do you have in your possession family records indicating considerable shipments made by your forebears over a long period of years?

A. I found some records the other day when I knew I was coming up here but they are not dated. They are just notations in a book, where they bought and sold so many bushels of grain but there is no date on it, so I didn't bring it along because I didn't think it would be authentic enough.

By Mr. Brown:

Q. Mr. Hatcher, do those records also show by what means of transportation the corn left Chicago?

A. No, no, not left Chicago; left the farm.

Q. Yes, but not left Chicago?

A. No.

Exam. Taylor: Is that all from this witness?

Mr. Brown: That is all.

Mr. Root: That is all.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

Mr. Root: Sidney Nelson.

SIDNEY NELSON was sworn and testified as follows:

[fol. 1021] Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. Sidney Nelson.
Q. Where do you reside, Mr. Nelson?
A. Why, about four miles northwest of Morris.
Q. And what is your occupation or business?
A. Farmer.
Q. Are other members of your family engaged in the same line of endeavor?
A. Yes, my brother and I.
Q. Have you prepared a statement that you would like to make in this case? Let us expedite this all we can.
A. Yes.
Q. Give us your statement.
A. I am a farmer and a producer of corn in the territory of Grundy County, three and a half miles northwest of Morris, Illinois. The local elevators now pay me two and a half cents to three cents more per bushel for my corn since they are shipping it to the Chicago market by the Illinois waterway than they could if they were forced to buy my corn on the railroad basis. I am a taxpayer and have paid all my just share of taxes assessed against me by the state and local communities, which have gone for public improvement and waterway transportation and I am entitled to any benefits that are made by the expenditure of such taxes. For a number of years I have checked the [fol. 1022] local market with the Chicago market and I know that several years ago the local grain dealers were buying the farmers' grain at nine and ten cents under the Chicago cash market. Checking the same figures now I know that the local elevator operator is buying our grain at about five cents to seven cents under the Chicago cash market. My brother and myself will sell this year between 10 and 12 thousand bushels of corn. This saving of three cents per bushel will mean at least $360 to our profit.
Q. Mr. Nelson, ten years ago how did you sell the corn, f. o. b. the elevator or f. o. b. the farm?
A. Ten years ago?

Q. Yes.

A. Why, at that time, why, it would be on the farm; that is, delivered at the elevator.

Q. Well, straighten yourself out in the record, will you,—at the farm or the elevator ten years ago?

A. Ten years ago delivered at the elevator.

Q. Who delivered it?

A. We did.

Q. Now, today when you sell corn do you sell it f. o. b. the farm or f. o. b. the elevator?

A. F. o. b. the farm.

Q. Is there any expense in transporting that grain from the farm to tne elevator which you must bear?

[fol. 1023] A. No, sir.

Mr. Root: That is all.

Exam. Taylor: Any cross examination? Mr. Cole? Mr. Day?

Cross-examination.

By Mr. Dav:

Q. How much corn did you raise?

A. This year?

Q. Yes.

A. There will be about 10,000 bushels.

Q. And your brother raised 2,000?

A. No, sir. We farm together.

Q. Oh, you own the same farm together?

A. Well, we farm together. We don't own the same farm together. We have separate land but we farm together.

Q. You raised 10,000 yourself, though?

A. I said 10,000 between my brother and I.

Q. You did on your original statement but I am trying to find out——

A. No, I read "between".

Q. How much do you raise on your farm?

A. I read on my statement, I say it is between my brother and myself.

Q. Well, just tell us about your own farm now.

A. Well, we farm together as one.

Q. Well, you have got one farm, haven't you?

A. Yes, but we are farming together.

[fol. 1024] Q. How big a farm is yours?

A. What I have got in my own name?

Q. Yes.

A. Well, if you have got to know personally, why, it is 128 acres.

Q. There is no secret about it. You are a taxpayer and anybody could find out from the records how big a farm you have.

A. That is right, you can go and look at the records.

Q. How big is your brother's farm?

A. 125.

Q. They lie adjacent to each other?

A. Yes, sir. There is no fence between them either.

Q. Well, then ordinarily—well, there are a lot of farms that are not fenced, aren't there?

Mr. Brown: He means no spite fence. That is what you mean, isn't it?

The Witness: Well, no, there is no fence between them. We farm it all as one, and our father's farm is alongside, too.

By Mr. Day:

Q. Your father's farm is alongside, too?

A. Yes, sir.

Q. And you farm that, too, you and your brother?

A. Yes, sir.

Q. How many acres do you and your brother farm altogether?

A. 367 acres.

Q. And it is on these 367 acres, then, that you get this 10 [fol. 1025] to 12 thousand bushels of corn?

A. Yes, sir.

Q. Now, you said that ten years or so when you used to sell to the local market the price was nine or ten cents under the Chicago market. Isn't it a fact that at that time the price of corn was almost double what it is today?

A. Oh, well, I was saying between the cash——

Q. Is that a fact or not?

A. Ten years ago?

Q. Yes.

A. Well, I would have to look it up and see.

Q. Well, you know corn has been around a dollar or over in that period?

A. Since ten years, too, it has been a dollar.

Q. Yes. Well, I wanted to give you the benefit of the longest period you mentioned. How long have you been farming there?

A. I have been farming for myself since 1920.

Q. Have you any government loan on your corn?

A. No, I don't need it.

Q. You never have had any?

A. No, sir.

Q. And this corn that you and your brother raise is sold to the river elevator, as I understand it?

A. It is sold to the Farmers Square Deal.

Q. Isn't that on the river?

[fol. 1026] A. No, sir.

Q. Where is their elevator?

A. It is situated on Liberty Street in Morris.

Q. Well, it is hauled direct to the river elevator, isn't it?

A. Well, I don't know; I don't follow it up. I sell it to them and then let them take care of it.

Q. They take it off of your farm and you don't know what happens to it?

A. No, sir.

Q. But you have an idea that it might move on the river after it leaves your farm?

Mr. Root: He says he dosn't know.

The Witness: Yes.

By Mr. Day:

Q. Is Morris the nearest town to your farm?

A. Yes, sir.

Q. Is there another town near it?

A. Oh, there is Seneca southwest of us and Yorkville north of us.

Q. You said you lived northwest of Morris?

A. Yes.

Q. Seneca wouldn't be the next nearest town, would it?

A. Well, yes.

Q. Isn't Seneca southwest of Morris?

A. Yes. That would be the next nearest.

Q. That is the next nearest?

A. Yes, sir.

[fol. 1027] Q. How far are you from Seneca?

A. Oh, about 12 miles.

Mr. Day: That is all.

By Mr. Enoch:

Q. Have you sold any corn this year?
A. Oh, I have sold a little bit.
Q. How much?
A. My wife's corn, not mine.
Q. How much?
A. Oh, there is about 200 bushels.
Q. To whom did you sell it?
A. The Square Deal.
Q. How much did you get for it?
A. 41 cents.
Q. How much?
A. 41.
Q. When was that?
A. Oh, it was in November sometime.
Q. About when in November?
A. Oh, I wouldn't say. Probably about the middle or maybe before then.
Q. You can't give me the date?
A. No, I couldn't give you the date. It was my wife's corn.
Q. Are you sure it wasn't the latter part of November?
A. Well, I couldn't tell you for sure when it was.
Q. I am not talking about the bids now.
[fol. 1028] A. No, I am talking about the corn I sold.
Q. You got 41 cents for this corn?
A. Yes, sir.
Q. Do you raise any oats?
A. Yes, sir.
Q. Do you sell them?
A. Some of them.
Q. Have you sold any this year?
A. No, sir.
Q. When you sell your oats to whom do you sell?
A. Square Deal as a rule.
Q. Do you know whether the barges ever handled any oats coming from your farm?
A. I don't ask them that question.
Q. Do you have the same experience in respect of prices on oats that you do on corn?

A. Oh, there isn't that margin.

Q. Is there any margin?

A. Oh, they must have some.

Q. You mean that the river elevators are offering a higher price than you can get for oats on a line elevator?

A. I don't inquire at the river elevator. I inquire at the Square deal.

Q. Do you know whether or not there is a different price in your community for oats for water movement than there [fol. 1029] is for oats for rail movement?

A. I don't inquire which way he wants to ship it.

Q. Then you don't know, that is the answer?

A. I ask him to get his price on the oats.

Q. Well, don't you ask him the same thing when you are trying to sell corn, what the price is on his corn?

A. Yes, sure.

Q. Have you ever tried to find out whether or not in regard to oats there is the same difference in prices that you have just talked about on corn?

A. Well, the crop of oats we sell is very small, it don't amount to much. We feed most of it.

Q. Well, you are trying to get all you can for your oats, aren't you, even though your volume is small, just the same as you try to get for your corn? You want to get all you can for it, don't you?

A. Oh, yes, we want to get all we can but it is no major crop, just a small crop.

Q. The fact of the matter is that you haven't got this situation in regard to oats that you have just described here in regard to corn, isn't that true, down around Morris?

A. Well, I wouldn't say for the elevator, I can't speak for them.

Mr. Enoch: That is all.

Exam. Taylor: Mr. Brown?

[fol. 1030] By Mr. Brown:

Q. Mr. Nelson, are you the same Mr. Nelson that appeared with another group before the Central Freight Association Lines in Chicago on September 1 this year?

A. Yes.

Q. My recollection is you said that you used to have your grain trucked from your farm into Wisconsin?

A. No, I never had any. I have had buyers that come down there bidding for it.

Q. Oh, yes. What I got was the gist, that the barge paid you about two cents a bushel more, the barge buyer, than truckers from Wisconsin used to pay you, is that about right?

A. No, I said over the railroad.

Q. Over the railroad. Well, now, when you sell your corn now do you sell it exclusively to the Square Deal Grain Corporation?

A. Well, I do, yes.

Q. Do you mind saying what is the reason for that?

A. No, I don't want to expose my opinion of the other dealers or anybody else.

Q. I didn't mean that.

A. Well, that is my reason.

Q. You think that the Square Deal lives up to its name?

A. Well, I have no complaint.

Q. All right. Are you in any way connected financially with the Square Deal Grain Corporation?

[fol. 1031] A. Oh, I own a few shares.

Q. Is that a cooperative company, the Square Deal Grain Corporation, operating under the Capper-Volstead act?

A. I don't know if it is.

Q. Are you a director in that company?

A. Yes.

Q. Have you any financial connection whatever with the Allied Cooperative Grain Dealers Corporation? I think that is the right name.

Mr. Root: That is right.

By Mr. Brown:

Q. Cooperative Allied Grain Dealers Corporation?

A. Well, they own a little stock in it.

Q. You own stock in it?

A. No, not myself; the elevator.

Q. The Square Deal Corporation, in which you own stock, also owns stock in the Allied?

A. Yes.

Q. Well, as a stockholder in the Square Deal Grain Corporation can you say whether the Square Deal Grain Corporation is at all financially interested in any of the towing

companies on the Illinois River? Would you know it if they were?

A. I don't know.

Q. Are you personally financially interested in any of the towing companies on the Illinois River?

[fol. 1032] A. No, sir.

Q. Are you financially interested in any company that owns or leases barges for carrying grain on the Illinois River?

A. You mean me personally?

Q. Yes.

A. No, sir.

Q. Would you know, as a stockholder of the Square Deal Grain Corporation, whether they are interested in barges financially that are operated on the Illinois River?

A. Well, I think they have a little bit of stock in it.

Q. That is, the Square Deal has?

A. Yes.

Q. In some barge company?

A. Yes.

Q. Do you know the name of that barge company?

A. The Allied Barge.

Q. It is known as the Allied Barge Company?

A. Yes.

Mr. Root: Corporation.

The Witness: Corporation.

By Mr. Brown:

Q. Allied Barge Corporation?

A. Yes.

Q. I would understand that latterly, at least the last two years, that all your grain is sold at the farm. That is, you [fol. 1033] get a certain prices at your farm and the buyer comes and gets it at your farm, is that right?

A. Yes, f.o.b. farm.

Q. And they make it a certain price at your farm?

A. Yes, sir.

Q. And you have nothing to do with the transportation from your farm either to the river or to the railroad elevator or beyond there, is that right?

A. No, sir.

Mr. Brown: That is all I have.

Exam. Taylor: Is that all from this witness? Have you anything on redirect?

Mr. Root: I would just like to ask one question.

Redirect examination.

By Mr. Root:

Q. Mr. Nelson, do you recall back here a few years ago corn was selling at about 25 cents a bushel on the Chicago cash market?

Mr. Day: I don't think he recalls anything like that.

The Witness: I sold it for less than that one year.

By Mr. Root:

Q. I am talking about the Chicago cash market. Do you remember when it was about 25 cents a bushel at the Chicago cash market?

A. What year?

Q. Well, do you remember a period back here several years ago when that was the case?

[fol. 1034] A. Yes.

Q. How much were they paying for grain in Morris at that time, the cash price in Morris at that time?

A. Well, when it was 25 in Chicago you mean?

Q. Yes.

A. Well, I think they were paying about 17 cents, I think, 16 or 17 cents.

Q. 16 or 17 cents?

A. I couldn't remember definitely.

Q. Was that before grain was shipped out of Morris over the Illinois waterway?

A. Yes.

Mr. Root: That is all.

Recross-examination.

By Mr. Day:

Q. When was corn selling for 25 cents on the Chicago market recently?

A. In 1932, I think.

Q. Do you think that was in 1932?

A. Yes.

Q. Did you sell some corn for 16 or 17 cents in that year?
A. I sold some for 20.
Q. For 20?
A. Yes, sir.
Q. When the Chicago market price was 25?
A. No, I didn't remember at that time what it was but I [fol. 1035] know it got down as low as 14 cents at one time at Morris.

Mr. Day: That is all.
Exam. Taylor: Is that all from this witness?
Mr. Root: May I ask one question that I overlooked?

Q. On the corn that you sold for your wife, that you answered someone on cross-examination, was that white corn or yellow corn?
A. Yellow corn.
Q. And what grade?
A. Number 2 or better.

Mr. Root: That is all.

By Mr. Day:

Q. Was that off one of the 373 odd acres?
A. No, it was off my wife's farm.
Q. Oh, she owns a farm also?
A. Yes, sir.
Q. She operates it herself?
A. I look after it.
Q. Well, do you work the farm?
A. No, sir.

Mr. Day: All right. That is all.
Exam. Taylor: Is that all from this witness? Witness cused; next witness.

(Witness excused.)

Mr. Root: Mr. Hunt.

Chester Hunt was sworn and testified as follows:

[fol. 1036] Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. Chester Hunt.
Q. Where do you reside, Mr. Hunt?

A. Morris, Illinois.

Q. In town or in the country?

A. In the country.

Q. And what is your business or occupation?

A. Farmer.

Q. Have you a short statement prepared that you would like to make?

A. Yes, sir. I have lived on a farm in the vicinity of Morris all my life and at present I farm 295 acres and I market from six to seven thousand bushel- of corn a year, corn being our major crop. Before the river opened to grain traffic we noted that our local elevators paid from nine to ten cents below Chicago for cash grain, cash corn, and since the river grain markets have become available the local prices for corn is from five to six cents below Chicago, that is, for equal grades. I estimate that the present river markets are worth about $180 a year to me on the corn.

Mr. Root: That is all I have on direct.

Exam. Taylor: Any questions? Cross-examine.

Cross-examination.

By Mr. Day:

Q. Are you living on a farm?

[fol. 1037] A. Yes, sir.

Q. How far is it from town?

A. Three miles.

Q. You make your sale to a river elevator, do you?

A. No.

Q. To whom do you sell your grain?

A. To the Square Deal elevator.

Q. And they come to your farm?

A. Yes, sir.

Q. Get the grain and haul it away?

A. Yes, sir.

Q. And pay you a certain price f. o. b. your farm?

A. They do.

Mr. Day: That is all.

By Mr. Brown:

Q. Mr. Hunt, you said you were a farmer. Have you any official connection with the Square Deal Grain Company at Morris, Illinois?

A. Yes, sir.

Q. What is your title or what is your position with that company?

A. I am president.

Q. How long have you been president?

A. Well, I believe it is about 10 or 12 years.

Q. Is that company a stockholder in the Cooperative Allied Grain Dealers Corporation?

[fol. 1038] A. Yes, sir.

Q. Is the stock held in the name of the Square Deal Company or you personally?

A. It is held in the name of the company.

Q. Did you hear what Mr. Nelson said about the Square Deal Grain Company, your company, being interested in the ownership of barges that operate on the Illinois waterway?

A. I didn't quite hear him but I think that is probably what he said.

Q. Well, I ask you now, does your company, the Square Deal,—if I don't give the right name, why, give it to me,—does your company, the Farmers Square Deal Grain Company of Morris, Illinois, does it own any barges that operate on the Illinois River that carries grain?

A. We own some stock in the barge company.

Q. And what is the name of the company in which your company owns stock for the barge?

A. I think that is the Allied Barge Corporation. I am not quite positive about the name.

Q. Are you an officer in the Allied Barge Company?

A. No, sir.

Q. Who is the president of that company?

A. Well, I don't know that I can tell you just who the president is.

Q. Do you know the name of the secretary of that company?

[fol. 1039] Mr. Root: Your Honor, I submit that this is outside of the scope of cross examination. We will also bring it out. We have a witness that will testify fully on it.

Mr. Brown: You have got a witness here who says that his company is interested in the ownership of barges and he has given the name of the company in which the title to the barges rests. Now, he is on the witness stand and I am going to ask him these questions.

Mr. Root: I was merely suggesting that to save time.

Mr. Brown: All right, I want to save time, too.

Q. Will you please give me the name of the secretary of the Allied Barge Company that owns these barges?

A. I can't give you the name of the secretary.

Q. Do you know anyone other than yourself who is interested as an owner in the Allied Barge Company barges?

A. I think that the Allied Grain Company owns stock in it.

Q. All right. Which is your company?

A. The Farmers Square Deal Grain Company.

Q. Part owner of these barges. Does your company, the Farmers Square Deal Grain Company, part owner of these barges, get any returns or profits from the operation of these barges?

A. Well, I don't believe that they have yet.

Q. As president of your company would you know?

A. I should.

Q. How long has the Allied Barge Company owned these [fol. 1040] barges and operated them?

A. I don't think it is quite a year yet.

Q. And no returns in this year, no returns for this last year?

A. Not to us at least.

Q. What is the end of your fiscal year of that company?

Mr. Root: Which company?

Mr. Brown: The barge company.

A. I can't tell you.

Q. And as a stockholder you don't know?

A. No.

Q. And so far as your own company is concerned it has so far received no return from its money invested in the barge company?

A. Not directly.

Q. Well, if it has not received it directly how has it received it indirectly?

A. Well, I came here to testify as a farmer and as to my grain interest in this, but I suspect that they have considerable indebtedness and they have been reducing their indebtedness.

Q. Who?

A. The barge company.

Q. Oh, you mean they are wiping off their original investment by their profits?

A. I would suggest that.

Q. In other words, what was the original investment and so far what has been the net profits?

[fol. 1041] A. I can't tell you.

Q. Well, can you tell me the name of any responsible officer of this company in which your company has got stock, can you tell me that?

A. Just what was that question?

Q. As your company as an owner of some stock in this barge company can you give me the name of any officer of this barge company who might give me the information I want to know as to its original investment and its net return so far from its whole year's operation?

A. I don't believe that I can.

Mr. Brown: That is all.

Mr. Cole: I want to ask one question.

Q. Mr. Hunt, I just learned that you were president of this Square Deal elevator. Does that elevator as such purchase grain at Morris from the various farmers around there?

A. Yes, sir.

Q. When the Square Deal elevator purchases the grain from the farmers does it ship all of that grain via the barges that are owned by this Allied Barge Company?

A. I don't believe that it does.

Q. What other methods of transportation does the Square Deal elevator use out of Morris to get *get* the grain to Chicago?

A. Some goes by rail.

Q. Sometimes the Square Deal elevator ships their grain [fol. 1042] via rail?

A. Yes, sir.

Q. To Chicago?

A. I don't know where they ship it.

Q. But sometimes they use rail shipment?

A. Yes, sir.

Q. Well, the same elevator after it purchases the grain does it sell that grain,—if it is going to Chicago does the Square Deal elevator send the grain to Chicago and wait for remittances from that sale at Chicago?

A. I don't know exactly what the procedure is there. Some of the grain goes to Chicago and some goes on the river. It would depend on the bids and where the grain is to go.

Q. Do I understand you to say that in some instances your company that you are president of, the Square Deal elevator, in some instances you ship corn to Chicago either via the river or via the railroad?

A. Yes.

Q. Lately have you made any shipments from Morris of corn to Chicago via railroad, within the last, say, two months?

A. I don't know that there has been.

Q. Have you made any shipments via this Allied Barge Line of corn to Chicago in the last two months?

A. Now you are talking about the Square Deal?

Q. Yes.

[fol. 1043] A. Our shipments would not be to that barge line. We would make the sales to the Allied Grain Company and they would ship on the barge, if that is your question.

Q. I don't believe I understood you, Mr. Hunt, in your reply.

A. We do not ship directly on the barge. Our sales that go by the river are made to the Allied Grain. The Allied Grain will ship on the barge.

Q. The Allied Grain,—you sell your corn, then, to the Allied Grain Company and the Allied Grain Company ships that grain in an Allied Barge Company barge, is that it?

A. Yes, sir.

Q. What relationship is there between the Allied Grain Company and that Allied Barge Company? Are they both the same?

A. I think not.

Q. Well, when the Square Deal Elevator Company as such sends shipments out on the railroad have they sold the grain to somebody else before it gets out on the railroad, too?

A. Well, I suppose so.

Q. Well, are you familiar as president with just the way the Square Deal Elevator handles its business?

A. To some extent.

Q. Do you have charge of the elevator?

A. No, sir. I am a farmer.

Q. Well, is any of your time involved in the operations or the business conditions of the Square Deal elevator?

[fol. 1044] A. No, sir.

Q. Are you in a position that you can say whether they shipped rail and ba-ge within a reasonably close time of one another?

A. I could not.

Q. You couldn't say that?

A. No.

Q. Whether they did or not, could you? Could you?

A. I can only answer the question as I have, that some of the grain goes to the rail, some goes to the Allied and on the river.

Q. How long has it been since any of the grain that the Square Deal elevator has bought has moved out over the railroad, do you know?

A. No, sir.

Q. Well, then, why do you keep on answering me that some of it is shipped out on the railroad if you don't know when they have made a shipment on the railroad?

Mr. Root: Mr. Cole, pardon me. Mr. Examiner, I think it is evident from his answers that this gentleman is not the operator of that. He is the president. Mr. Allen is the manager of the Square Deal and he handles the transactions of that corporation. He is going to go on the stand and you will have an opportunity to examine him at any length that you see fit on how he handles that business of the grain company, or anything else.

Mr. Cole: All right. I didn't know that he was going on. [fol. 1045] In order that we might not have the record confused with Mr. Hunt, then, Mr. Hunt, will you just listen and answer this question just to try to straighten this out here?

Q. You are unable to say from your own knowledge, Mr. Hunt, because you do not operate the elevator and you don't have anything to do with their business, how they ship their stuff from time to time, do you?

A. I wouldn't want to make a positive statement.

Mr. Cole: All right, that cleans that up.

Exam. Taylor: Is that all from this witness?

Q. Mr. Hunt, you mentioned the fact that the Allied Barge Company does the moving of the grain up the Illinois River?

A. Yes, sir.

Q. I have heard throughout this case of tow boats. Are they separate organizations?

A. Of who?

Q. Tow boats that take the barges. Are they separate from, for example, the Allied Barge Corporation?

A. Yes, sir.

Q. They are a separate organization?

A. Yes, sir.

Q. Has your company any interest in them?

A. We own no tow boats, no.

Exam. Taylor: Is that all from this witness? Witness excused. Next witness.

(Witness excused.)

[fol. 1046] Mr. Root: Mr. McClelland.

R. A. McClelland was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

A. R. A. McClelland.

Q. Mr. McClelland, where do you reside?

A. Dwight, Illinois.

Q. You have prepared a statement which you would like to make here today?

A. I have.

Q. Will you give that statement?

A. My name is R. A. McClelland and I reside in Dwight, Illinois. For 32 years last past I have owned and operated a country grain elevator in Dwight, Illinois which is 20 miles south of Morris, Illinois, which is the nearest point on the Illinois waterway and is approximately 74 miles from Chicago, Illinois. During my experience I have seen a great many changes in the grain business. For many years farmers hauled their grain through mud and snow with horses and wagons. With the improvement of roads came the period of small farm trucks and now with the concrete highways the farmers generally employ large commercial trucks to transport their grain to the local eleva-

tors. During this period the country elevators have also [fol. 1047] been required to make changes, many of them expensive, in order to give proper service to their farm patrons. Transportation from the country elevators to the terminal elevators has likewise changed during this 32 year period. In the earliest days we had small cars from 40,000 pounds to 60,000 pounds capacity, then came to the exit of these cars and the use of 80,000 pound capacity cars. Now we have cars of 100,000 pound capacity and even larger. During this period of time we also had changes in rates in the transportation of grain by rail. In the earliest days the rate from Dwight to Chicago was 5 cents per 100 pounds. Then gradually the rate was raised to 9½ cents per 100 pounds in 1934 and finally to 10 cents per 100 pounds in 1938. With the appearance of the large trucks came the idea of the long hauling direct from the farm to the Chicago terminal elevators and the elimination of the country elevators which had served the farmers these many years and which should still serve the farmer at the present and in the future. In my territory in and about Dwight the Rosenbaum Grain Corporation was the originator of the procedure of trucking the grain direct from the farmers to the terminal elevator in Chicago. This practice started during the years 1933 and 1934 and the idea was spread like fire by other firms on the Board of Trade from one farm community to the other. As an independent country elevator operator I was then faced with the problem of whether I could stay in business against [fol. 1048] this truck competition. It cost me one cent per bushel to haul the corn from the farm to my elevator in Dwight and 5⅜ cents per bushel to ship the corn by rail from Dwight to Chicago, plus one cent per bushel commission paid in Chicago. Later, when the rail rate was raised to 10 cents per 100 pounds in 1938, it cost me 5-6/10 cents per bushel to ship corn from Dwight to Chicago. At the same time the large truck was hauling the grain direct from the farm to the Chicago terminal elevator for 5 cents per bushel. Even today, when I have the advantage of the Illinois waterway shipping rates, together with reshipping privileges on grain shipped over that waterway, E. R. Bacon & Company has on many occasions over-bid the price which I can afford to pay. E. R. Bacon & Company has a full time man in Morris who purchases grain throughout

the country and all the grain purchased by him is trucked direct from the farm to the Chicago terminal elevators. Recently I called a trucking company to haul for me and, believe it or not, the trucker's wife informer me, "He is hauling corn from near Rockford, Illinois to E. R. Bacon & Company in Chicago." The principal cash crop which is sold by the farmers in the vicinity of Dwight, Illinois is corn. With the above mentioned conditions existing I saw my business of long standing going to pieces and could see no relief in sight. Together with other grain men from my part of the state I came to Chicago and many times attended meetings in which we implored the Chicago [fol. 1049] Board of Trade to control the action of its members who are trucking directly from the farm to the terminal elevators in Chicago. Myself and other grain men in this part of the state also implored the railroads to assist us in making competitive rates which would enable both the railroads and the country elevators to remain in business. Each and every time we had such a meeting we received promises from both the Board of Trade and the railroads but nothing more of any value to us. Conditions were indeed becoming desperate for the country elevators. The farmer who had paid me a commissio.. during the many years I had been in business for obtaining the best price and giving him the best service that I could would laugh when I said to him, "Now, John, it is better that you sacrifice two or three cents per bushel and continue to sell your grain to me so that I can ship it to Chicago by rail and enable the Chicago commission men and the railroad to get their regular charges." This method of approach, of course, would not work so that myself and other elevator men were compelled to seek new methods by which we would be enabled to meet this truck competition. Fortunately, a number of years ago the State of Illinois conceived the idea of the deep waterway along the Illinois Valley and has spent millions of dollars in deepening and improving the Illinois River. During this time we were told by such men as Governors Lowden and Deneen this taxpayers' money was being spent for the purpose of providing cheaper transportation. In the summer of 1934— [fol. 1049a] this would be either in 1933 or 1934, I am not just sure which,—which was shortly after the construction of the Illinois waterway, two firms operated by men of

vision, namely, James Finnegan and Farmers National Grain Corporation, built elevators on the river front at Morris, Illinois. At last myself and other elevator men in this part of the state had available a method of meeting the truck competition and could maintain our local country elevator business. Upon the demise of the Farmers National Grain Corporation a number of independent elevator men and the Farmers Cooperative Elevator Association, in the vicinity of Morris, knowing the necessity of keeping available the river transportation of grain, organized the Cooperative Allied Grain Dealers Corporation and leased the elevator formerly occupied by the Farmers National Grain Corporation at Morris. The Cooperative Allied Grain Dealers Corporation took over the operation of this elevator in June of 1938 and has successfully operated it since that time.

Mr. Brown: What year, please?

The Witness: 1938. May I add that all elevator companies and owners in the vicinity, and who could be benefited by shipping by water from Morris, were invited to become members of the Cooperative Allied Grain Dealers Corporation and that offer still remains good. I am the secretary of the Cooperative Allied Grain Dealers Corporation and I am certain of this fact. It is my experience and knowledge, as an independent elevator operator and [fol. 1050] through my association with the Cooperative Allied Grain Dealers Corporation, that any elevator in the vicinity of Morris who is willing to become a member of the Cooperative Allied Grain Dealers Corporation can protect his own business and serve his patrons better. It is true that in the summer of 1939 the railroads adjacent to the Illinois waterway did estabish lake billing rates, which in themselves were considerably lower than the Illinois proportional rates, but it is interesting to note that the railroads did not do this to aid us in competing with the truck competition but did it only after we elevator men were forced to organize the Cooperative Allied Grain Dealers Corporation and ship via the Illinois waterway to protect ourselves. It is also interesting to note that these rates are graduated according to the distance to the respective shipping points from the Illinois waterway at Morris and it is apparently upon that basis that they were compiled. Since it has been possible for me to have my patrons' grain trucked to Morris and shipped from that

point to Chicago via the Illinois waterway, it is possible for me to pay my patrons from a half a cent to two cents more per bushel than I could pay my patrons were I to ship this grain to Chicago via rail under either of the rates now available to me, namely, lake billing rates or Illinois proportional rate. During the period that I have owned and operated an elevator it has been necesary for me and other elevator operators to make many adjustments to [fol. 1051] keep up with the times. One of these was the organization of the Cooperative Allied Grain Dealers Corporation which we did before it was too late. By doing this we have preserved our own business and made available to the farmers of the Illinois River valley the promise of the State of Illinois which has been "Cheaper rates by water transportation." It is my opinion that the Interstate Commerce Commission should not permit the proposed change in existing tariffs which, in my opinion, will benefit a few people at the expense of many farmers and business men and which will defeat the plan and promise of the State of Illinois and the Federal government to provide the farmers of the Illinois valley with the advantage of cheaper water transportation.

Exam. Taylor: Is that all on direct?

Mr. Root: Just one question I want to ask him.

Q. Mr. McClelland, did you and Mr. O. B. Robins at any time have a conversation with Mr. Behrle of the Alton Railroad with regard to obtaining a reduction in the freight rates so that you might meet the truck competition to which you referred in your statement?

Mr. Brown: You said, "at any time"? Do you mean at any specific time?

Mr. Root: Let him specify as nearly as he can the time.

The Witness: Many and many a time I have done so, starting back with the origination of the trucking business [fol. 1052] in Chicago.

Mr. Root: That is all.

The Witness: I have given him all the records that I had in my office and made them available to him so that he could act accordingly.

Exam. Taylor: We will recess for five minutes.

(Whereupon a short recess was had.)

Exam. Taylor: All right, now, gentlemen, come to order. Have you finished with the direct?

Mr. Root: Yes, sir.

Exam. Taylor: Cross-examine.

Cross-examination.

By Mr. Cole:

Q. Mr. McClelland, you testified that you had truck competition with your rail shipments before this water transportation came into play?

A. We did.

Q. Now, Mr. McClelland, now that the water transportation is in the picture I understood you to say that Bacon still secures his goods from your territory via truck?

A. If he possibly can, yes.

Q. Do you know what bids are being made in the country by Bacon's representatives in competition with you?

A. No, I don't because he certainly wouldn't give me his bid.

Q. And you haven't become familiar with——

A. I have heard of them at different times. I have been [fol. 1053] shown cards at different times.

Q. When you have been shown those cards that Bacon was bidding in your territory what bids were you able to make with reference to that same bid?

A. Well, there were some times that with my low margin that I would not be able to meet the bid. Other times I would be perhaps half a cent above Bacon's bid.

Q. Then at the same time, for the same class merchandise since your water transportation is available you have been approximately on the same level with Bacon's bids for the truck shipments?

A. Very much so.

Q. And at times you have been able to outbid him?

A. At times I have been maybe half a cent over Bacon's bid, depending on how much he wanted to pay.

Q. Generally, those, bids, though, that Bacon's representatives have been able to make and yours have run, you would say, very close together?

A. Fairly so.

Q. And they have been that way since the water transportation has been in?

A. Yes.

Mr. Cole: Thank you. That is all I have.

Mr. Day: I have a few questions.

Q. I take it from what you said about your conferences [fol. 1054] with Mr. Behrle that your elevator is on the Alton Railroad?

A. Yes, sir.

Q. This grain that you buy and handle through the river facilities at Morris doesn't go through your elevator at all?

A. Not as a rule, no, sir.

Q. Do you handle any grain at all through your elevator now?

A. Yes, whenever I see fit.

Q. Where you have grain handled through your elevator would the movement by rail be in another direction than toward Chicago?

A. Not necessarily so, no.

Q. Do you sometimes have rail shipments to Chicago?

A. Quite frequently—I won't say quite frequently but I probably ship to Chicago more than any other market.

Q. When did you last ship any corn to Chicago?

A. Corn?

Q. Yes.

A. Oh, I can't tell you.

Q. It has been quite a while ago?

A. I wouldn't want to tell you positively when I had any.

Q. Do you know whether there were any shipments this year?

A. That is what I am not positive of. I think so, though.

Q. You don't know about that?

A. I think that I have.

Q. But you are not sure?

A. No, I wouldn't want to go on record that I had or had not.

[fol. 1055] Q. Is your elevator being used at all for storage of government grain?

A. Not my elevator, no, sir.

Q. Not your elevator?

A. No.

Q. What is the capacity of your elevator?

A. About 30,000, depending what it is filled with.

Q. What have you got in there now?

A. I have got some beans, a little corn, some oats.

Q. How much altogether?

A. Oh, I wouldn't say at the present time but not over two or three thousand bushels.

Q. What is the most of that, beans?

A. The biggest bushelage would be oats.

Q. That will move out via rail sometime, I suppose?

A. Probably so, yes.

Q. Now, there are other elevators in Dwight, are there not?

A. Yes, sir.

Q. Others on the Alton?

A. Yes, sir.

Q. How many?

A. Two.

Q. Do they handle grain as you do for shipment on the river?

A. In the same way, yes, sir.

Q. In the same way. That is, they make the same use [fol. 1056] of their elevator facilities about as you do?

A. Well, there is a little difference. There is one elevator that they use for dead storage. They fill it with oats and let it lay there until they get it ready to ship out and then from then on it is probably empty.

Q. Then is there an elevator on the New York Central at Dwight?

A. There is.

Q. Is that working in the same way?

A. Well, I presume it is. I am not familiar with the way they handle their elevators.

Q. You don't know?

A. It isn't my business. They probably wouldn't tell me.

Q. So far as these elevators with which you are familiar are concerned it is pretty much a storage proposition nowadays with them?

A. No, I don't use mine as dead storage. I use it more as a cumulative or whatever way that it serves my patrons the best and to my best interest.

Q. How long have you had these oats in there now?

A. Oh, I have had part of them in there since along in September, I presume, one kind of oats.

Q. Now, you stated that--well, let me ask you this first: What is your truck cost to the river at Morris?

A. It costs me a cent and a half a bushel out of my territory.

Q. And what do you get out of it,—two cents a bushel as [fol. 1057] these other operators do?

A. What, to Morris?

Q. Yes.

A. Well, I get one cent and I hope to get two.

Q. You mean that you hope that there will be some readjustment later on that will give you another cent?

A. There will be sufficient profits made that will make me two cents a bushel.

Q. Is that on account of your connection with the Co-operative Allied?

A. It is, yes, sir.

Q. But as an elevator operator without your Allied affiliation you get how much?

A. I get one cent.

Q. One cent. You stated that the rail rate was 10 cents, I think, from Dwight to Chicago?

A. Yes, sir, and I. P. billing.

Q. Subsequently you modified your statement to the effect that you said that in June of this year, or thereabouts, the railroads had put in some reduced local rates?

A. Lake rates.

Q. Yes. Now, it is a fact that the present rate, the present local rate via rail from Dwight to Chicago is 6 cents, isn't it?

A. Yes.

Q. You also stated that these local rates were made with [fol. 1057a] relation to the location of the origin from the river and that as you got farther away from the river the rates increased?

A. Yes, sir.

Q. Now, do you know what the——

A. We have a 5 cent rate at Morris.

Q. Do you know what the rail rate is from Morris to Chicago?

A. 65 cents from—I mean it is 5 cents from Morris, 5½ from Mazon and 6 cents from Dwight.

Mr. Brown: Are you talking about the lake locals, Mr. McClelland?

The Witness: Yes, sir.

By Mr. Day:

Q. Where is Bacon's elevator in Chicago?

A. That I can't tell you. Down in South Chicago, I believe, but I am not sure.

Q. Is it located on the water?

A. It is on the Calumet Basin, I think.

Q. Well, is it on the water? Is it available to the water?

A. I don't think so. That is, I will say this, that it might be available to the water but I don't think he has facilities for unloading barge grain.

Q. Well, that is what I meant. If he hasn't got facilities, of course, it doesn't make any difference whether he is within a foot or a mile of the river. The Cooperative Grain organization with which you are connected is the same association with which Mr. Hunt was connected?

[fol. 1058] A. Yes, sir, the same one. There is about 22 or 23 of us.

Q. He is the president and you are the secretary?

A. No, sir, Mr. Hunt is not president. He is president of the Square Deal elevator in Morris.

Q. But in any event you are secretary of the Cooperative Allied?

A. Yes, sir.

Mr. Day: That is all.

By Mr. Enoch:

Q. Do you ever sell any oats to the Allied Cooperative?

A. A few.

Q. Where do you sell the most of your oats?

A. Wherever I can get the best treatment and most money.

Q. Do you sell most of them in Chicago?

A. Sometimes in Chicago, sometimes Lockport, sometimes in St. Louis.

Q. What is your steadiest market where you sell most of your oats?

A. It depends altogether upon the quality oats that I have. This year I don't have a good quality oat. Consequently, I put most of them to Chicago. They are not fit for the mill at Lockport.

Q. And how do you transport them to Chicago?

A. By rail.

Q. Can you get a better price for those oats by selling them to Chicago and transporting them there by rail than [fol. 1058a] you can get from any other purchaser?

A. Well, I won't say that because I go according to impulse and custom and I have friends on the Chicago Board of Trade that I occasionally want to give something.

Q. You wouldn't be so impulsive as to sell to the Allied, for instance, if you couldn't get as much money for it as you could at Chicago?

A. No, I would not.

Q. Now, have you received any corn recently,—have you received any bids for corn recently from the Allied Co-operative?

A. Well, I suppose my office has recently, has received them this afternoon. I haven't.

Q. Well, just speaking of your own knowledge now, when was the last bid?

A. Well, Monday afternoon was the last bid I had because that is the last time I was home.

Q. Well, take the first part of last week, did you get any bid from the Allied for corn?

A. I get them daily.

Q. What were they on Monday of last week?

A. I couldn't tell you.

Q. Can you tell me any particular day?

A. No, I couldn't tell you any particular day without looking at the records.

Q. Have you been buying from the farmers,—speaking [fol. 1059] of corn now,—during the last week?

A. I bought some corn——

Q. Pardon me, I mean the week before this.

A. Week before this?

Q. Yes.

A. I think I did, yes.

Q. Well, from whom?

A. Well, you have kind of got my memory now. I bought some on Monday of this week from Peter McGregor.

Q. How many bushels?

A. About 1500.

Q. Do you recall anyone else from whom you have recently bought any corn?

A. Oh, I bought corn from—I can't tell you just exactly what date or whether it was last week; that is immaterial to me as long as I get it. I bought corn from Joe Carstensen. I can name you a lot of them if you want to know them, that I bought from recently.

Q. Well, tell me some that you bought from recently and what you paid?

A. Well, I can't tell you.

Q. You are not in position to state now the information which would show the spread between the bid price for which you sold the grain to the Allied Cooperative and the price which you gave the farmer for his grain? You can't [fol. 1060] give me that information?

A. State that again, please.

Mr. Enoch: Please read the question.

(Question read.)

A. Well, I can give the information. It was one cent a bushel.

Q. No, no. What I mean is you are not in a position here now, as I understand it, to give us the information which would allow us or this Commission here from this record to determine the spread between the bid price that you got and the price paid to the farmer?

A. I couldn't exactly, no, sir, not from memory. May I tell you this, that I perhaps buy a little differently than others do. There are different customs in different towns. I see fit to make my price based delivered at Morris on the corn because I know that I can pay them more money by doing it. In that way my bid is one cent under the bid that the elevator at Morris gives me; that is, the Cooperative Allied Grain Dealers.

Q. Well, now, do I understand by that that you do not make the farmer an f. o. b. farm price?

A. No.

Q. That you make him a price delivered at Morris?

A. I don't make him that price. I make the price at Morris. I may indicate to him what it will net him at the farm.

Q. As between you as an elevator operator and the farmer from whom you are purchasing corn your dealings [fol. 1061] are direct with one another, are they not?

A. Yes, sir.

Q. And then you sell,—after you buy this grain from the farmer you sell it to the Allied Cooperative at Morris?

A. Well, occasionally I send it to Seneca.

Q. And to whom do you sell it there?

A. Cooperative Allied Grain Dealers.

Q. The same outfit?

A. The same outfit.

Q. Now, approximately how long after you make this sale do you get your cash and your returns?

A. Well, on an average it is the second day after the corn goes over. I can get it the day that it went over if I follow the corn to get it.

Q. Do you get any account sales or any other similar documents from a corn house or anybody in Chicago?

A. None in regard to that particular corn.

Q. Well, in regard to any of the corn?

A. Oh, if I ship corn to Chicago I do.

Q. You mean by rail?

A. Yes.

Q. Do you get an account sales from the Allied Cooperative?

A. Well, you can call it a straight account sale or not. It is virtually the same thing. It is a statement of the loads, with the weights, with the price extended, which I [fol. 1062] presume would be the same as what you would call in Chicago an account sale.

Q. Does that document, whether it is proper to call it an account sales or not, show any charges which are purporting to be trimming charges?

A. It doesn't to me, no, sir. If I sell them corn at 53 cents a bushel, 2 yellow corn, they will pay me the 2 yellow corn price on my contract with no deductions except if the corn is not up to the contract grade.

Q. Now, wholly apart from the amount of money you get, does this document which we have been calling an account sales have any items on it that are described as trimming or commission or towing?

A. No.

Q. Or any similar items?

A. Now, let me get this straight. What I get from Morris in return for the corn that I send over there from Dwight?

Q. Yes.

A. No, sir, I do not.

Q. Now, do you get any documents from anybody in connection with your sales of corn where there is a movement out of Morris or Seneca or any other of those water elevators?

A. That I can't answer you because I am not in the office over there. Later on Mr. Robins will give you all that kind of information.

Q. Now, in this latter capacity you have been speaking [fol. 1062a] as secretary of the——

A. I am speaking more as an individual grain dealer. Any information you want concerning the elevator you will be perfectly welcome to get from Mr. Robins and Mr. Allen, president.

Mr. Brown: Of the Allied?

The Witness: Of the Allied Grain, yes.

Exam. Taylor: Mr. Brown?

By Mr. Brown:

Q. Mr. McClelland, I think you have just stated now that all the testimony you gave now is as an individual elevator operator at Dwight, Illinois?

A. Yes, what I referred to as Dwight.

Q. Your transactions between you and your former patrons in delivering corn at Morris or Seneca?

A. Yes.

Q. That is all you have been testifying to?

A. Yes.

Q. Now, is your elevator at Dwight,—are you the sole owner there?

A. Yes, sir, I am, of that elevator.

Q. Yes. Now, what is your nearest——

A. Let me qualify that. Put it in my wife and myself to tell the whole truth.

Q. That is close enough for me.

A. If you want to be technical I will give it to you.

Q. No, I don't want to go into any of your family affairs. [fol. 1063] Now, what is your nearest competitor who is bidding grain against you, where is his location?

A. Well, he is about two blocks down the street.

Q. Well, a little farther away; the next town we will say?

A. Well, there is Odell, that is about nine miles to the

southwest; Gardner, nine miles to the northeast; the little station of Blair, which is about five miles east and the station of Sunbury, that is about five miles west approximately.

Q. Well, would it be proper to say that the extent of your natural territory would be about two and a half miles west and then north and south about four and a half?

A. Not necessarily so, no, sir.

Q. Why not?

A. In Dwight we have some very large holders of land that own land at points that are farther than two and a half miles west and in other directions also and they happen to be friends of mine and I buy considerable grain from them.

Q. Were they patrons of your elevator before you commenced to ship by barge?

A. They have been for 32 years.

Q. Have you enlarged your buying territory to some extent since you commenced to ship by barge?

A. Yes, I think I will say that it has to a certain extent.

Q. Well, now——

A. Do you want to know why?

[fol. 1064] Q. If you want to tell me something go ahead.

A. Because the other elevators that are in that territory did not see fit to benefit themselves by the river transportation.

Q. You mean by becoming stockholders in the Allied?

A. Yes.

Q. Well, we will come to that later. Now, what would you say has been your normal, what they call margin or net profit, in operating your elevator year in and year out before you commenced selling to the barge?

A. I tried to get two cents.

Q. At the present time when you are shipping most of your corn, or having delivered most of your corn that you buy at either Seneca or Morris, do you sometimes have the farmer deliver it there and give him a set price at the elevator?

A. If I deliver to Morris or Seneca?

Q. And allow him to truck it?

A. Well, he can get any truck he wants to. I make him the price at Seneca or Morris and he can get any transportation agency he wants.

Q. You never do that for him?

A. Sometimes as an accommodation for the farmer I do, when they ask me to arrange for the transportation of the grain.

Q. What would you say would be the average haul on the highway from the farmers' farms that you are now generally buying from over to Seneca and Morris?

[fol. 1064a] A. Well, to Morris it would probably be about 20 miles. I have got some 25, 26 miles. I haul some as far as 35 miles.

Q. And does the allowance for trucking, of course, vary with the length of the haul?

A. Yes, the truckers charge pretty much according to the distance. In this territory, within a six mile radius of Dwight, it is a cent and a half a bushel.

Q. That comes out of the farmer's price?

A. That comes out of the price that the farmer gets. I deduct it. At the time I make settlement with the farmer I deduct the hauling charge for the trucker.

Q. In other words, as I understand it you take the bid from the Allied and then you transmit to the farmer whatever you think you ought to pay him for the grain, is that right?

A. I give him the price that I contract to pay him.

Q. And the difference between the two is for your services?

A. The difference between the Allied bid, you mean and what I pay the farmer?

Q. Yes, less the trucking?

A. Yes.

Q. That is your profit for your services?

A. Yes, one cent.

Q. One cent a bushel?

A. Yes.

[fol. 1065] Q. Does it ever get over that?

A. Does it ever get over that?

Q. Yes.

A. Oh, once in a while, if I don't happen to sell the grain today and the market goes up tomorrow. Sometimes it is the other way.

Q. Now, are there any other stockholders in the Allied who are competitors of yours within eight or nine miles of your elevator?

A. Oh, I have got a lot of them.

Q. Within eight or nine miles who are also stockholders?

A. I wouldn't say a lot of them but I have got several.

Q. Who are also stockholders in the Allied?

A. Who are also stockholders in the Allied, yes, sir.

Q. Now, do you invade their territory when you take as low as a cent a bushel for your services?

A. No, I don't think I do, not of members of the Allied, no, because I have no advantage over them and they have none over me.

Q. You think they do as you do?

A. I think they do the same as I do.

Q. Since you are not the sole owner of your elevator at Dwight, are you also the sole owner of the stock that you hold in the Allied,—I want to get the right name,—Co-operative Allied Grain Dealers Corporation?

A. Yes, sir.

[fol. 1066] Q. And you are secretary of that organization?

A. Yes.

Q. All right. Now, has that Grain Dealers Corporation any relationship to what has been called here the Allied Barge Corporation or Allied Barge Company?

A. They are to the extent of the stock that they hold in it.

Q. That is, the Grain Dealers Corporation owns stock in the Allied Barge Company?

A. Yes.

Q. Do you individually own any stock in the Allied Barge Company?

A. I do not.

Q. It is only through your stock ownership in the Grain Dealers Corporation that you are connected with the Allied?

A. Yes.

Q. All right. Now, as secretary of the Grain Corporation can you tell me what investment there has been so far in barges that are owned or controlled by the Allied Barge Company?

A. No, sir, I can't tell you that because I am not familiar with the Allied Barge Line.

Q. I see. The Allied Barge Company has a separate set of officers?

A. They have a separate set of officers, yes, sir.

Q. Do you know who they are? Do you care to tell me who they are if you know who they are?

[fol. 1067] A. Well, I think Mr. Robins is president and I think,—I am not sure but I think Mr. Allen is secretary, although I cannot be sure about that.

Q. All right, we will let that go. Now, as secretary of the Grain Dealers Corporation can you tell me what rental the Grain Dealers Corporation pays to the Barge Company for the use of their barges in hauling the grain to Chicago?

A. No, I cannot because that is a matter that is established by the manager of the company.

Q. Isn't there a time of making an accounting to the Grain Dealers Corporation, what it has to pay the barge company?

A. We haven't had a fiscal year since the thing was started.

Q. I see. Do you expect to have that soon?

A. I hope so.

Q. Do you think you will have it before this hearing is closed?

A. No, I don't.

Q. You will delay it until after?

A. Although if it goes on the way it is around here I am quite sure we will have.

Q. All right. Are you also a director in the Allied?

A. The Allied Grain Dealers?

Q. Yes.

A. Yes, sir.

Q. And the secretary?

A. Yes, sir.

[fol. 1068] Mr. Brown: That is all.

Exam. Taylor: Is there anything on redirect?

Mr. Root: I would like to ask just a very few questions.

Redirect examination.

By Mr. Root:

Q. Mr. McClelland, do you personally know most of your patrons who deal with you in your elevator in Dwight?

A. I think I know all of them.

Q. How many years do you say that you have done business with the average of your patrons?

A. Oh, I couldn't tell you the number of years on the

average of my patrons. I can tell you the number of years of the oldest of my patrons, which would be 32 years. They come and go, die and grow up.

Q. As a matter of fact, do you usually do business with the same group of patrons one year after another?

A. Very largely so.

Q. Making allowance for some coming of age and certain ones dying or moving away?

A. Yes, largely so.

Q. As a result of your business experience do you have any opinion as to whether it is better business practice for you to take a reasonable profit of, say, two cents a bushel and pass on to your patrons the rest of the price that you can get for the grain, or not?

Mr. Enoch: Oh, just a moment. There is no basis for [fol. 1069] any such an assumption as that. I don't know that there is any testimony here about anything being passed on.

Mr. Root: Well, I believe there is a reason. I want to find out what the practice of this man's business is here.

They have inquired about what he took out of it and how much he did not and so on and so forth, so I want to show that this man over a period of years has taken out about the same amount.

Mr. Enoch: I want to object to any further testimony along this line that allows the witness to tell conclusions without stating the facts upon which the conclusions are based. Now, Mr. Root knows that the proper way to put in that kind of testimony would be to show what the grain sold for when it passed into the hands of the Allied Co-operative and what the farmer got for it and how much Mr. Allen took out of it and how much the trucker took out of that and then the Commission could come to some conclusion as to how much the farmer got out of it.

Mr. Root: I will withdraw that statement. Off the record.

(Discussion outside the record.)

Exam. Taylor: Is that all?

By Mr. Root:

Q. During your period of elevator operatorship what is the commission which you have been trying to get on each bushel of grain you handled?

A. It has been my practice to attempt to get two cents per bushel.

Q. Is that the practice you have followed over the 32 years?

[fol. 1070] A. Yes; of course, depending upon competition. Sometimes I have had competition and I did well to get what I paid for it.

Q. Has your practice changed any in the last three or four years?

A. Well, at the present time if I took over two cents per bushel Mr. Bacon would be down there and get the corn.

Q. I mean taking into consideration what you expected to get back from your cooperative are you still attempting to get two cents a bushel?

A. Yes, I am.

Q. Over a period of 32 years have your patrons apparently been satisfied with your service?

A. I don't think they would continue to do business with me if they hadn't been.

Mr. Root: That is all.

Exam. Taylor: Anything further on direct? Cross? Witness excused. Next witness.

(Witness excused.)

Mr. Root: Well now, if somebody else wants to get in here now with some other witness that will not be available later I wish they would do so.

Mr. Enoch: I would like to see the Allied finish. I understand Mr. Allen is here.

Mr. Root: Let me say this for the benefit of everyone: Mr. Allen and Mr. Robins are both here. The way this is going on neither one of them could possibly finish today. [fol. 1071] They will be present at any continuation of this hearing whether it is here or in Washington.

Mr. Brown: Why do you say "Washington"?

Mr. Root: I am merely telling you what the Examiner mentioned a while ago, that it might be in Washington. This is my first experience in one of these cases. I don't know what will happen.

Mr. Brown: Wouldn't this be a good time to settle what we are going to do?

Exam. Taylor: Let us go until five o'clock.

Mr. Root: I am going to say that Mr. Robins and Mr. Allen will testify.

G. W. Baxter was sworn and testified as follows:

Direct examination:

Exam. Taylor: Give your name to the reporter.

The Witness: My name is G. W. Baxter. I am director of the transportation department of the Illinois Agricultural Association. The Illinois Agricultural Association is a membership association of approximately 72,000 farmers in the State of Illinois located in each of the counties of the state. Back in 1935, in the Memphis Grain Case, ICC docket 26965, in that case I represented the Illinois Agricultural Association and the American Farm Bureau Federation as a result of the meeting of the board of directors of each of those organizations, in which they laid [fol. 1072] down a policy that no farmer should be denied the natural advantages of any inland waterway transportation, and in discussing this case with our president and general counsel we are taking the same position in this case of the objectors, that the farmers located near the Illinois waterway should not be denied any natural advantage which they may have and no farmer, or I will say individual producer not living adjoining the waterway will in no way be affected in the price that he gets for his corn.

Mr. Enoch: That is a pretty large order you have dealt yourself there, that you have delivered yourself of there, I think.

The Witness: Well, if you can prove that he has been hurt, I will leave it up to you. That is all I have.

Exam. Taylor: Anything by counsel for protestants?

By Mr. Root:

Q. If I understood your last statement you mean that no one away from the Illinois valley, in your opinion, has been harmed?

A. No. His price is not affected in his bids that he gets because he cannot take advantage of the river. Now, he don't get as good a price, I will admit that, but the river has no effect.

Q. He gets the same prices he always did before?

A. Always did before and always will, possibly. We hoped he would get a better one.

Mr. Root: We all did that.

[fol. 1073] Exam. Taylor: Is that all?

Mr. Root: I have no more.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Enoch:

Q. What farmer are you talking about,—the farmer out in Iowa?

A. I spoke f the membership in the State of Illinois and I so mentioned.

Q. This fellow that is always going to get the same price as he got before, who is that?

A. You speak of the farmer in Iowa, he hasn't the natural advantage of the Chicago market that some Illinois rail shipper has. He has to pay a higher rate.

Q. He used to have the benefit of the Chicago market?

A. Well, he sells on the Chicago market but I say that a farmer in Iowa may pay 20 cents a hundred freight rate to get into Chicago where an Illinois shipper may pay 12 cents. He has a geographical advantage.

Q. You made the statement here that the farmers not tributary to the waterway were not hurt by this natural highway that you referred to?

A. Natural waterway, yes.

Q. And I am wondering what farmer you are talking about? Now you are talking about the farmer in Iowa. You say he is not hurt by this?

[fol. 1074] A. I am not speaking for the farmer in Iowa. I am speaking for the membership in the State of Illinois whom I represent.

Q. Where is this farmer located who is not going to be hurt? That is the man I am talking about.

A. I am speaking of the fellow away from the river.

Q. Is that the man in Iowa?

A. In Illinois. I am not speaking for Iowa. I have no authority to speak for Iowa.

Q. Tell me as an expert, will he be hurt? What is your opinion about whether or not the man in Iowa will be hurt?

A. I don't see that he will be hurt.

Q. How about the man in Nebraska?

A. I don't see that it will affect him one way.

Q. Do you think they were hurt when by reason of cheap water transportation from Peoria to Havana a great deal of this corn went into the southeast? Do you think they were hurt at that time?

A. Well, I don't see that they were.

Q. Do you think that they were hurt if by reason of this extra volume of grain moving down the Illinois and Mississippi rivers to Memphis, thence into the southeast, they were denied a market which they had had for the previous ten, twenty or thirty years? Don't you think that that had some effect upon their ability to get their grain into consuming territory?

A. Are you speaking of that abnormal movement in 1937-1938?

[fol. 1075] Q. Yes.

A. Well, I think that the farmers from that section of the country shipped grain down there as well as the waterway.

Q. Let me ask you this: If, say, the farmer in Nebraska had corn to sell in the old days and had a market in the southeast and he had been in the habit over a long period of years of finding consumers for his corn down in the southeast and then by reason of the situation such as arose on the Illinois and Mississippi rivers there was an unusually large volume of grain moving from points like Morris and Havana and Peoria, from a territory as narrow as 25 miles from the Illinois receivers, and by reason of that he was denied that market which he had previously had, has he been hurt, in your opinion?

Mr. Belnap: Mr. Examiner, I am going to object on the ground that the witness in his direct did not go into conditions outside of the State of Illinois. He is bringing in about some farmer in Iowa or Nebraska.

Mr. Enoch: Well, I have asked him what his position was about that.

Mr. Belnap: All right.

Mr. Enoch: And he told me he didn't think he would be hurt.

Mr. Belnap: He is dealing with the situation in the State of Illinois in his direct. I object on the ground that the cross examination goes beyond that.

Mr. Enoch: I understand this witness is now subject to [fol. 1076] cross examination. He has expressed the opin-

ion that the man in Illinois who is not tributary to the river is not hurt. Now, in order to test the merit of that opinion I certainly have a right to ask him whether or not the man in Iowa or the man in Nebraska will be hurt.

Mr. Belnap: By what?

Mr. Enoch: Similar circumstances.

Mr. Belnap: If I understand the question it has no relation to similar circumstances, Mr. Examiner.

Mr. Enoch: Well, your understandings, I hope and I think, are very much in error there.

Mr. Belnap: I heard Mr. Enoch state certain bases, certain facts about the displacement of tonnage and the state of the record shows that there is no evidence given on direct by the witness on which to predicate any statement like that and I object further on that further ground, I make that objection also.

Mr. Enoch: I asked him to assume that, which, I say, is analogous to this situation in Chicago on this extra volume of grain by water to Chicago, which has not occurred before in the last two years.

Mr. Belnap: Mr. Examiner, I don't understand that the record shows that the movement by water has made an extra volume of movement. All the evidence I have heard is that when it would move by water or by rail it would be the same volume.

Mr. Enoch: I said "extra volume by water."

[fol. 1077] Exam. Taylor: The witness may answer if he knows.

The Witness: Well, I don't know that it would move any different in the territory you speak of but if it did happen there was an extra volume going down the river, taking the cash grain out of central Illinois, I think it would help the Chicago market and thereby help probably the Nebraska farmer.

Mr. Brown: You mean in the matter of price?

The Witness: Yes. They would have more of a demand for corn in Chicago and pull it out of central Illinois.

By Mr. Enoch:

Q. Well, do you think this farmer I am talking about is located on the Chicago market? I am talking about this fellow out in Iowa and Nebraska. I want to know if this market is taken away from him, the one that he has had for ten years, by reason of——

A. I don't know that it is.

Q. I am asking you to assume that it is. If it is taken away from him is he hurt?

A. I don't see that he is.

Q. All right. And that is the reason you say that this Illinois farmer who is not tributary to the waterways is not hurt?

A. No, he gets the same price for his corn as he always has, based on the Chicago market.

Q. There is the reason, or, I say, is the reason or one of the reasons why you arrived at the conclusion that the man not tributary to the water in Illinois is not hurt the reason [fol. 1078] that you say that the man in Iowa and Nebraska is not hurt in the circumstances I asked you to assume?

A. One reason I say that is that——

Q. You are not going to answer the question, I can see that.

A. You heard the testimony yesterday by these elevator men that if this rate was cancelled that they could not pay the farmer any more money, and that is what we are interested in, is the producer himself. We are interested in seeing that he gets more money for his grain.

Q. Didn't you attend a hearing in Atlanta?

A. Yes, sir.

Q. What hearing was that?

A. I couldn't tell you the name of it.

Q. Did it have anything to do with the rates from this territory into the southeast?

A. Yes, that affected the rates—as I recall, the Oklahoma and Texas interests were seeking a reduction into the southeast and an increase from Illinois, as I recall it.

Q. You opposed that reduction?

A. Yes.

Q. On the ground that it would be injurious to the Illinois corn grower. Why?

A. Because we had a territory in southern Illinois that had a natural market in the southeast.

Q. And you were afraid that if Oklahoma got this reduc- [fol. 1079] tion into the southeast they would ship more grain from Oklahoma than they had previously shipped and to the extent that they did ship more grain there would be less grain moved from Illinois and other producing territories?

A. Well, they were proposing to increase the Illinois rates, which would have that effect, and lower the Oklahoma and Texas rates.

Q. Now, are you right about that, that there was a proposal to increase the Illinois rates into the southeast?

A. As I recall there was a proposed—you say not?

Q. No.

A. Well, I will take your word for it.

Mr. Cole: No increase in Illinois.

The Witness: It was a reduction in Oklahoma and Texas.

Mr. Cole: That is right.

Exam. Taylor: Is that all, Mr. Enoch?

Mr. Enoch: Yes.

By Mr. Day:

Q. Where are your headquarters, Mr. Baxter?

A. 608 South Dearborn Street.

Q. In Chicago?

A. In Chicago.

Q. Who maintains your organization? Who pays the expenses?

A. This is a membership organization of 72,000 farmers.

Q. You have 72,000 farmers paying dues?

A. Yes.

[fol. 1080] Q. How much are your dues?

A. The dues are fifteen dollars per year and ten dollars of that fifteen goes to the county farm bureau, which is the county organization, and the other five goes to the Illinois Agricultural Association and out of that five we pay fifty cents per member to the American Farm Bureau Federation, which is the national organization.

Q. Have you any farmers in Cook County paying fifteen dollars a year to your organization?

A. Yes, sir. About 1800.

Q. Have you any farmers in Palos Township paying those dues?

A. Well, now, I couldn't tell you by townships but if it is a farming or truck gardening section I would say we have. I believe we do have.

Q. Do you have any members in the vicinity of Beaverville?

A. Yes, sir.

Q. Kankakee?

A. Yes, sir, and in Chicago too. I am a member myself. I have to be.

Q. Do you have in this 72,000 a number of people who are not farmers?

A. Not so many. Usually the members are absent land owners who live in town but there are in some cases merchants who do belong.

Q. Now, you stated that the fact that low rates are presently available on barge grain into Chicago for movement [fol. 1081] east does not hurt or adversely affect other farmers in Illinois?

A. I don't see that it does, no.

Q. Do you think that a farmer, say, ten miles west of Kankakee or, we will say, shipping out of Kankakee at the local rate of 34½ cents to New York is disadvantaged in comparison with the farmer who hauls his grain or has it trucked to Morris and then ships it via barge and then under this present low reshipping rate of 26½ cents hurts that farmer at Kankakee?

A. Well, now, that farmer that you speak of west of Kankakee can truck over to the river the same as these others do.

Q. Well, I am talking about the farmer who uses the railroad.

A. Well, the farmer don't ship to New York direct.

Q. Well, he sells his grain on the basis of shipping it direct to New York, does he not?

A. Yes.

Q. And in that case the grain would pay a 34½ cent local rate?

A. Out of Chicago?

Q. Yes.

A. Yes.

Q. Well, out of Kankakee. Kankakee takes the Chicago rate.

A. Well, I assume that is the same rate. I don't know what it is.

Q. Well, Kankakee takes the Chicago rate, you know that?

A. Yes.

Q. Now, then, the grain that has been hauled into Chicago [fol. 1082] by barge could move by rail from Chicago through Kankakee to the east and pay only 26½ cents as the rail factor out of Chicago?

A. Well, it don't make any difference whether he lives at Kankakee or Champaign. His bid on grain is no different whether it is 34 cents or something else.

Q. Don't you think that he is hurt by that disadvantage?

A. I don't see that the farmer is.

Q. Even though he gets about six cents less than the other fellow who is located perhaps 56 miles farther and who gets all this extra and additional transportation at a lower charge than this man shipping out of Kankakee does?

A. I can't see where that man will get any more or less for his grain regardless of the river.

Q. Well, so far as your organization is concerned that is all right. You are satisfied to have one farmer have to pay on the higher basis.

A. That is a geographical location. Now, every farmer in the State of Illinois don't pay the same freight rate into Chicago on his grain, we know that.

Q. But looking at it from the standpoint of the rail transportation how can you justify the higher charge for the man who is situated nearer to New York than the fellow whose grain coming from this point in the west would move through Kankakee?

A. Well, he has got a natural advantage there.

Q. And as far as you and your organization are con- [fol. 1083] cerned that is all right?

A. Yes, sir. If he has got a natural advantage let him keep it.

Mr. Day: That is all.

By Mr. Cole:

Q. Mr. Baxter, I hand you exhibit 3 that has been introduced in this case. Will you please look at "Chicago" shown on that exhibit?

A. Yes.

Q. Is there grain raised in Illinois by members of your organization just outside of that place of Chicago, not within that black line area but closer to Chicago than that black line area, almost, you could say, local grain to Chicago, just outside, just west there?

A. I question whether there is or not, Mr. Cole. What little grain,—most of that is truck gardening. If they raise any other grain they probably feed it. I question it.

Q. How far west of Chicago would we have to get before we would get into a territory where there is a substantial production of grain?

A. Oh, I think west of Joliet and probably north.

Q. That black line there, would you say that the area within that black line area would indicate where grain is produced?

A. Well, I question whether there is very much grain in that line as close as you have it to Chicago there; that is, this section in here.

By Mr. Day:

Q. What point is that that you say there is no grain? [fol. 1084] A. I question whether there is very much commercial grain raised in the south end of Cook County and that line does include part of that. That is mostly truck gardening.

Q. I don't think you know much about the south end of Cook County, do you?

A. Well, I have lived out there for twenty years.

Q. You didn't know where Palos Township was and I don't suppose you know where Orland Township is?

A. Yes, I know where they are but I don't know if they are in that 1800 members in Cook County.

Q. And around Tinley Park and Mokena?

A. Yes, sir.

Q. Aren't they good grain producing sections?

A. Well, there are small tracts of land out there most of them.

Q. Well, aren't they as big as anywhere in the State of Illinois?

A. They may be but their grain isn't generally,—I say grain isn't generally raised out there on a large scale.

Mr. Day: I don't think you know anything about it, sir.

By Mr. Cole:

Q. Well, all right, what grain there is raised out there, let us suppose we start with a carload of grain raised somewhere within the black area on exhibit 3 close to Chicago, so that the man has a short truck haul to Chicago and he hauls his grain to Chicago. The other man, your member, [fol. 1085] is located down around Morris, Illinois, and he ships his grain over the waterway and he gets his grain to

Chicago, so that both of those men have their grain at Chicago. Do you think there is any difference as between their situations which would entitle either one of the two men to have a different freight rate east of Chicago on their corn, just east of Chicago now?

A. Are you speaking of this fellow here shipping in by rail or by truck up there?

Q. He is just trucking it in from a short distance outside of Chicago and not a greater distance away from Chicago.

Exam. Taylor: And not a greater distance away from Chicago than Morris is?

Mr. Cole: No, he is closer than Morris.

Mr. Day: Mr. Examiner, he wouldn't have to truck it. He has got the Chicago rates. The Chicago rates apply down to Kankakee; that is 56 miles from Chicago.

By Mr. Cole:

Q. Both of those men get their grain shipped to Chicago now. Can you see any feature which would entitle either one of those fellows to a lower freight rate via rail out of Chicago when they move their grain out of Chicago?

A. Well, what do you mean "any lower freight rate", mile for mile? One is closer than the other. Do you mean an equal freight rate?

Q. Can you see any reason why either one of them should have a different freight rate than the other man to the [fol. 1086] same destination? Both of them, we will say, ship to Baltimore.

A. Of course, the mileage would make the difference.

Q. I said both men were shipping from Chicago to Baltimore.

A. Oh.

Q. Two carloads of grain, one carload was trucked in from a short distance outside of Chicago and was unloaded there at Chicago and put in a railroad car. One carload came up the Illinois River and was also put into a railroad car at Chicago. We have got two cars of corn. The corn is the same kind of corn. The corn is sold to the same man in Baltimore, for instances. Both cars move from Chicago to Baltimore behind the same engine. Can you see any reason why there should be a different freight rate on either

one of the two cars from Chicago to Baltimore after it gets into Chicago?

A. Of course, the farmer don't know where that goes but the fellow that trucks his grain in there probably wouldn't have any billing and there would be a penalty on him, I assume.

Mr. Day: Well, even if he had the billing he wouldn't get any lower rate.

The Witness: Well, what I understood Mr. Cole's question was——

By Mr. Cole:

Q. Look, Mr. Baxter, on your direct you stated that you were the director of the transportation department. Now, I understood from that you are a transportation man and I am trying to limit my question to the matter of transpor-[fol. 1087] tation and we have got both cars of corn,—remember that I put it to you this way, that both of those cars of corn were loaded with corn at Chicago and they are both of them moving to Baltimore and I want to ask you whether either one of those cars should receive a different freight adjustment from Chicago to Baltimore than the other car? I am asking you that as a transportation man.

A. Whether I think there should be?

Q. Yes.

A. No, I don't think so.

Mr. Cole: That is all. Thank you, Mr. Baxter.

By Mr. Brown:

Q. Mr. Baxter, just a minute. How many actual grain growers, that is, surplus grain for market, are included in these 72,000 farmers in your organization?

A. I don't believe I could tell you that, Mr. Brown.

Q. Could you make a fair estimate?

A. I would say—well, I don't know whether I could give you a correct answer or not, a correct guess.

Q. Fifty per cent of them?

A. Maybe half of them.

Q. Fifty per cent of them?

A. Fifty per cent of them.

Q. Scattered all over the state?

A. Well, I think probably that would cover from the south third of the state north. I think our membership is [fol. 1088] probably heavier in the central part of the state.

Q. Well, does your membership extend up as far as this Illinois valley around Dwight and Mazon and Morris?

A. Yes, every county in the state.

Q. And there are actual grain growers of surplus grain for shipment?

A. Some of our members are, yes.

Q. Well, I am talking about this part of the country around here up in the Illinois valley?

A. Oh, well, maybe I misunderstood your question. Did you ask me how many were in the Illinois valley in that territory?

Q. First I wanted to know how many of the 72,000 farmers who are members of your organization are actual growers of surplus grain for shipment?

A. Well, I would say making a hazard guess on it at 50 per cent.

Q. And you may be able to tell me how many of those 72,000 are in this Illinois Valley and are now making use of that transportation system for their surplus grain?

A. I couldn't tell you how many surplus grain growers there are in there.

Q. That is all I am interested in. Now, has the Illinois Agricultural Association, has it title to any grain handling facilities that you know of as an association?

A. I don't know whether the title is in the name of the Illinois Agricultural Association or not but we are inter- [fol. 1089] ested in the Allied elevator at Morris.

Q. Oh, they have an interest in that?

A. Well, they had the lease when the Farmers National quit business.

Q. And then does the Illinois Agricultural Association lease it to the—or release it to the Cooperative Allied Grain Dealers Corporation?

A. Well, it is leased to them. Now, I can't tell you,—I never saw the lease or anything else but I might be correct.

Q. Well, now, from whom would the Illinois Agricultural Association lease this elevator?

A. From whom?

Q. Yes.

A. Well, as I say, my information about that elevator

is very meagre but as I understand it the lease was obtained through the Farm Credit, I believe.

Q. Farm Credit Administration?

A. I think so.

Q. They hold title to the property?

A. I think so but, as I say, my information is very meagre on that.

Q. You said in your direct testimony, or left the inference, probably everybody here not on your side of the house are endeavoring to take away the natural advantages of the Illinois waterway. Do you say that is the position of the [fol. 1089a] Chicago Board of Trade itself on the testimony you have heard here?

A. Well, I don't know what the Chicago Board of Trade's position is. I suppose you could state it on the record.

Q. Well, I want to know if when you said that you had in mind the Chicago Board of Trade and, if you did, was it based on anything that you heard in this hearing?

A. Well, I didn't say anything about the Board of Trade.

Q. No, but you said the people here were wanting to take away the natural advantages of this transportation system over the Illinois waterway. Now, didn't you say that?

A. No, I did not. I don't recall that I said that.

Q. All right.

A. I was talking about the elevator operators who testified in here yesterday.

Q. Oh, the country fellow himself?

A. Yes.

Q. Well, he is not a member of your organization, presumably?

A. No. I made reference to him, that he was giving no better prices to the farmer.

Q. I see.

A. But I didn't infer anything about the Chicago Board of Trade.

Q. Now, Mr. Baxter, do your duties extend beyond just the Illinois Agricultural Association?

A. Yes. I handle transportation matters for the Illinois Farm Supply Company and other subsidiaries.

[fol. 1089b] Q. Are they subsidiaries of the Illinois Agricultural Association?

A. Yes.

Q. And are they the cooperative that is used in the handling of grain for shipment?

A. Are you speaking of the Illinois Grain Corporation?

Q. I am talking of any subsidiary that you have in mind by which you are employed in connection with rates for the shipment of grain by rail or by water.

A. I don't know that any of our organization owns any facilities for grain shipping.

Mr. Brown: That is all.

By Mr. Bradford:

Q. Mr. Baxter, in your testimony in Atlanta in January in docket 17,000, Part 7-A, wasn't it your position that if the rates on grain and grain products from Oklahoma and Kansas and the western territory were reduced to the southeast that it would either shift the business from Illinois to the southwestern territory or if the Illinois territory wanted to stay in the business that it would result in a lower price to the producer in Illinois?

A. I think I did testify to that, that it would either pay a lower price or we would lose the business. Our position was somewhat the same as yours, I think, at that hearing.

Q. Now, then, can you tell me what difference there would be between a different level of rates from Oklahoma and [fol. 1090] Illinois to the southeast and a different level of rates from one section of Illinois to Chicago as against another section bearing this in mind that the producer in Illinois selling his grain to Chicago sells on the Chicago price less the transportation charge? Now, if that is true wouldn't the producer who has the benefit of the lower railroad level of rates profit against the producer who hasn't got that benefit?

A. Well, the producer does profit that can use the river, it has been shown here, but that don't in any way affect the movement of grain from the farmer who hasn't got that advantage to the market.

Q. But it affects his price, doesn't it?

A. I don't see that it does.

Mr. Bradford: That is all.

Mr. Wheat: I have got one question that I would like to ask. I want to go a little further than Mr. Cole did.

Q. Assuming, Mr. Baxter, that grain was trucked from the vicinity east of Dwight to Morris, Illinois and was moved from Morris, Illinois to Chicago by barge, in your

opinion should that grain in moving east of Chicago take a lower rate than grain which might be moved from some farm to Chicago by truck direct?

A. Well, I don't know that it would. I don't know what the truck rate might be on that.

Q. I am talking about the rates east of Chicago. I said should it take a lower rate east of Chicago when it was [fol. 1091] trucked direct from the farm to Chicago than if it moved by truck to Morris and thence barge to Chicago?

A. I think I answered that a while ago.

Q. Mr. Cole asked you about a shipment moving direct by truck into Chicago as against a shipment moving in by rail.

A. My answer would be the same.

Mr. Wheat: That is all.

Exam. Taylor: Anything on redirect? Anything further? Witness excused.

(Witness excused.)

Robert Isham Randolph was sworn and testified as follows:

Direct examination.

By Mr. Childe:

Q. Will you state your name, please?

Mr. Enoch: I would like to know in whose behalf Col. Randolph is here?

Mr. Childe: He is called in behalf of the Mississippi Valley Association, protestant.

Exam. Taylor: Proceed.

By Mr. Childe:

Q. State your name, please.

A. Robert Isham Randolph.

Q. Where do you live?

A. Chicago.

Q. What is your occupation?

A. I am a civil engineer.

Q. How long have you been engaged in that profession? [fol. 1092] A. 35 years.

Q. For whom are you appearing in this proceeding?

A. For the Mississippi Valley Association.

Q. What is the Mississippi Valley Association?

A. It is a voluntary organization of shippers, individuals, firms and business men represented throughout the states of the Mississippi Valley, with headquarters at St. Louis.

Q. Are you a member of that organization?

A. I am a member of the executive committee, yes.

Q. How long have you been a member?

A. I have been a member of the organization since the organization was formed some 21 years ago.

Q. Have you had any official connection with the organization?

A. I was president of the organization from 1931 to 1938, inclusive.

Q. What is the purpose of the Mississippi Valley Association?

A. I can best express it by reading the declaration of purposes.

Mr. Day: I don't see how that is relevant, Mr. Examiner, and I object to it.

Exam. Taylor: Can't you state it shortly, Colonel?

The Witness: Yes.

Exam. Taylor: Just in a few words rather than reading it all.

The Witness: The purposes and objectives of the Mississippi Valley Association are the promotion, encouragement and development of commerce and industry and agriculture in the area drained by the Mississippi River and its tributaries, in the promotion and development of foreign and domestic commerce in the mid-continent section, in the improvement of the economic conditions of the region.

[fol. 1093]

By Mr. Childe:

Q. Has the Mississippi Valley Association taken any action in regard to this proceeding?

A. Yes. It took action at its annual meeting on the 17th of October last in adopting a report of the transportation committee directing that the Mississippi Valley Association participate in proceedings now before the Interstate Commerce Commission involving rates on grain from Chi-

cago to the east, in opposition to the proposal of the railroads to charge higher rates on grain which has had a prior haul into the market by barge than on such grain which has moved into the market by rail or lake, thus taking away from producers and shippers the economies of river transportation into the market by rate penalties on the subsequent outbound movement of such grain.

Mr. Enoch: May we have the membership of the transportation committee stated at this time?

Exam. Taylor: Did you hear that, Mr. Childe?

Mr. Childe: Was that request directed to me?

Mr. Enoch: Yes.

Mr. Childe: I do not have the list. I can supply it for the record if you desire it.

[fol. 1094] Mr. Enoch: Are you on the transportation committee?

Mr. Childe: I am chairman.

Q. Have you had any connection with the construction of the Illinois waterway, Col. Randolph?

A. Yes.

Q. State what that has been.

A. Well, practically all my life has been associated with it. I grew up with the construction of the Chicago drainage canal. My father was chief engineer during the entire period of construction. I saw the first shovelful of earth taken out and the water pumped in. I was employed by the Sanitary District from 1904 to 1908 on the Chicago River improvement, bridge construction and river engineer and deepening. I made the original surveys for the Calumet Sag canal. Thereafter I was secretary of the Internal Improvement Commission of Illinois.

Q. Is that an official body?

A. Yes. From 1908 until 1911. In 1911 the Internal Improvement Commission was merged into the Rivers and Lakes Commission of Illinois and I continued as secretary of that until 1913.

Q. Was that likewise a State of Illinois department?

A. A state department yes, with jurisdiction over the rivers and lakes of Illinois. During that period, in 1908, when I was secretary of the Internal Improvement Commission we had the vote on the constitutional amendment to permit the issue of twenty million dollars in bonds for the construction of the Illinois waterway. I participated

[fol. 1094a] in the preparation of the preliminary plans for that and in the campaign for the passage of the constitutional amendment.

Q. Since that time have you had anything to do with it?

A. Since that time I have been in general practice as a consulting engineer on river and harbor work, land drainage and reclamation and have been associated with the project for the improvement of the Illinois River in connection with my membership on the Harbors and Waterways Committee of the Chicago Association of Commerce and my continued membership in the Mississippi Valley Association and I have been familiar with the history of that development throughout those years.

Q. Have you had official connection with the Chicago Association of Commerce other than this committee that you speak of?

A. Yes. Since about 1914 I have held committee memberships in the Association of Commerce on the Harbors and Waterways committee and in 1930 and 1931 I was president of the Chicago Association of Commerce.

Q. Have you since been a member of this waterways committee?

A. I am now.

Q. Will you describe briefly the Illinois waterway and its history and purpose?

Mr. Day: Mr. Examiner, this is all very interesting but I cannot see the relevancy or materiality of it.

Mr. Cole: I can't either.

[fol. 1095] Exam. Taylor: We have had quite a bit of history in this case already, as I see it. Why can't you just skip that? We know where the Illinois River is now and we know about its predecessor and when the first boat started and when it stopped and everything else. Can't we skip that and go to the meat of this witness' interest in this proceeding?

Mr. Childe: It seems to me that this is the crux of the case, to show what the waterway is for, but, of course, I will abide by the Examiner's ruling.

Mr. Belnap: Might I make this observation, Mr. Examiner? We have had witnesses supporting the respondent who dealt with testimony that portions of the Alton Railroad would have to be abandoned in the event that eastern lines would not have to make changes in their rates and it was ruled that it was relevant.

Mr. Day: Well, at least the Alton is a railroad and it is railroad transportation that the Commission is investigating here.

Mr. Belnap: What it is investigating is the application to restrict the application of rail rates on grain that has had a movement by water on a certain stream.

Exam. Taylor: I was just trying to shorten it. I wasn't trying to hold it out or to rule it out. I was trying to shorten the hearing, if possible.

Mr. Belnap: I would like to have the evidence go in. If it has a bearing I think it is relevant.

[fol. 1096] Mr. Day: I would like to point out further, Mr. Examiner, that this water transportation is wholly unregulated and there are no charges via the water lines, if there are any such things, filed with the Commission in this case, or before the Commission in this case. It has nothing to do with this proceeding.

Mr. Belnap: Well, neither are the rates of the Alton Railroad up to Chicago in this proceeding and yet we have had a great deal of testimony about them and Mr. Day asked a great many questions about them.

Mr. Bradford: There has been no denial but what the Illinois River is here. Now, if it is here I don't see what is the use of going into all the history of why it is here. It is here.

Exam. Taylor: All right, make it short.

By Mr. Childe:

Q. Will you do that, Colonel?

A. I will have to go back to Marquette and Joliet to give its history.

Exam. Taylor: I don't want you to go back that far.

The Witness: I won't go back that far but I think it is germane to point out that the governmental acts in relation to the development of the waterway began with the Ordinance of Virginia of July 13, 1787 accepting the cession of the Northwest Territory and that Ordinance provided that the navigable waters leading into the Mississippi and the St. Lawrence and the carrying places between shall be com-

[fol. 1097] mon highways and forever free as well to the inhabitants of the said territory as to the citizens of the United States themselves and any other state that may be taken into the Confederacy without any tax, impost or duty

thereon. The Ordinance further fixed the territorial boundary between Illinois and Wisconsin as the parallel touching the southern end of Lake Michigan but when the state was admitted to the Union in 1818 the northern boundary was moved north to parallel 42 degrees and 30 minutes, giving to the state a port on Lake Michigan and putting the waterway entirely within the territorial limits of a single state. Later Congress made a grant of land by the Act of March 30, 1822, five alternate sections on each side of the route of the canal, amounting to 2,841,000 acres.

By Mr. Childe:

Q. On what date was it that the Act was passed by Congress authorizing the State of Illinois to construct a canal?

A. Well, they made the grant right away through the public lands on March 20, 1822. The Act authorizing the construction was March 2, 1827.

Q. When was construction begun?

A. July 4, 1836 and it was opened to traffic in the spring of 1848 on the high level six feet above the lake level.

Q. Pardon me, did you mean 1936?

A. 1836.

Q. Proceed.

[fol. 1098] A. The summit level was lowered in 1871 to provide a gravity flow. The drainage canal was started by the enabling act of 1889 and completed when the water was turned in in July, 1900. The constitutional amendment for the twenty million dollar bond issue was voted in November, 1908, but the actual construction—on the authorization of the sale of the bonds,—and the construction was not started until about 1930, as I recall it. It was opened to navigation in the spring, or in June of 1933. In April 1930, the federal government took over the Sanitary District canal and the Illinois waterway and made it an adopted project from Lake Michigan and the then adopted project for the lower Illinois River at LaSalle and in that Act they made a declaration that it should have enough water diverted from Lake Michigan to make it a commercially useful waterway.

Q. My notes here indicate in 1871 there was an enlargement of the canal?

A. I mentioned that. It was cut down so that the summit level,—so as to give a gravity flow and it was finished in 1871.

Q. Who paid for that improvement?

A. The City of Chicago paid the entire cost of that lowering of the summit level. It was afterwards reimbursed to the city, after the fire.

Q. Has there been a continuous history of effort to develop the waterway over the whole period that you have covered by your testimony?

[fol. 1099] A. There has been a continuous effort practically since Marquette first suggested that cutting a canal across that territory would join the waters of the Illinois with the waters of Lake Michigan.

Q. Have there been any further improvements since the federal government took over the waterway?

A. The Calumet Sag canal has had side tracks put on it, and an improvement project for enlarging the Calumet Sag canal and the Calumet River.

Q. Are further improvements authorized and unfinished?

A. Well, the lower river has been improved, the two old state dams at Henry and Copper Creek have been abandoned, the two federal dams at La Grange and Campsville have been replaced by a new dam at Peoria and a new dam at LaGrange, providing for larger locks, 110 feet wide and 600 feet long, with nine feet of water over the mitre sills.

Q. Have you covered the Chicago end of the line also?

A. The Chicago River was widened and deepened as a part of this process. The federal government spent about a million and a quarter on that enlargement and the Sanitary District about thirteen million. The old center pier bridges were removed and the old river given a least width of 200 feet and a least depth of 126 feet.

Q. What was the purpose of the last improvement of the waterway that you testified about?

[fol. 1100] A. The basic purpose of the construction of the sanitary and ship canal was for sanitation but it was given ship canal dimensions in the enabling Act for the purpose of creating navigation in the port of Chicago and extending it throughout the continental divide, to enable the construction of this lakes to the Gulf waterway.

Q. What was the underlying purpose of constructing a navigable waterway in the Illinois River?

A. For the promotion and development of the commerce of Chicago and the State of Illinois.

Q. In that answer what kind of commerce are you speaking of,—all kinds or any particular kind?

A. All kinds of commerce, water borne commerce.

Q. In seeking and obtaining the funds for this construction did you have in mind the movement of agricultural products on the waterway?

A. Yes, to Chicago, which is one of the great central markets.

Mr. Childe: Mr. Examiner, we have some citations to which we wish to refer, of the declared policy of Congress in making the Illinois and other navigable waters of the country, and of improving the Illinois and other navigable waters of the country, taken from official documents and it would save time if we would be permitted to refer to those documents on brief. Will that be permitted?

Mr. Enoch: I think if there is anything going into the [fol. 1101] record I think it ought to go in in the shape of an exhibit.

Mr. Cole: Well, if it is to be referred to as a matter of fact, which we should know, of course, then it should be in the record, or is it going to be used simply as argument about something?

Mr. Day: Mr. Examiner, I would like to know the pertinency and relevancy of all this? Just what is it addressed to? Is it to show some specific violation of the Interstate Commerce act resulting from these proposed rates? I cannot see that it is pertinent here.

Mr. Childe: If I may try to answer those two gentlemen, the facts to which we wish to refer are that Congress has declared by statements and by official reports dealing with those statutes recommended for passage that a certain policy was followed with reference to the development and use of the inland waterways. We rely on that as outlining the declared substantial policy and we wish to use it in argument as supporting our view that the Commission should so adjust freight rates by a rate as to encourage the use of the inland waters.

Mr. Day: Well, now, if you are referring to Section 500, doesn't it say that the Commission shall fix such rates as will promote and foster both rail and water transportation?

Mr. Childe: Yes, Section 500 is one thing to which we wish to refer. Another thing is the Inland Waterways Cor-

poration act and the report of the committee recommending [fol. 1102] it for passage and explaining its purpose, and we also wish to refer to the Cullom report recommending the passage of the original Interstate Commerce act, dealing therein with its views as to inland water transportation and its desirability.

Mr. Day: If your Honor please, I submit that all this borders on the frivolous.

Exam. Taylor: You wish to make use of that only in your brief, do you not?

Mr. Childe: That is correct.

Mr. Enoch: Are these acts of Congress?

Exam. Taylor: He said they were.

Mr. Cole: He referred to some reports of different committees. Acts of Congress we are already bound by no matter we sit here and admit them or anything else, we are bound by them, they are acts of Congress, but these reports, we don't want anything to do with them.

Exam. Taylor: What kind of committee reports do you want to make reference to?

Mr. Childe: Of the Interstate Commerce committee of the House and Senate recommending the legislation to which I have referred for passage.

Mr. Day: I don't understand they are pertinent except as an aid to the interpretation of a statute.

Mr. Childe: That is exactly what we want to use them for.

Mr. Belnap: Couldn't we have the argument at argument [fol. 1103] time and go on with the hearing?

Mr. Cole: He is asking to do something.

Mr. Belnap: Well, you are arguing with him about what is pertinent and what is not pertinent.

Mr. Day: I have an objection, Mr. Belnap.

Exam. Taylor: You have given reference to all that you wish to refer to, have you not?

Mr. Childe: Yes, but there are certain passages in there that I wish to quote.

Exam. Taylor: On this record?

Mr. Childe: In brief.

Exam. Taylor: On brief?

Mr. Childe: To save time, instead of putting it in the record.

Mr. Enoch: The way to save time is to do what all the rest of us would have to do; if we wanted to offer in evi-

dence in the case an excerpt from a committee report we would have to put it down in an exhibit and submit it and this would have been over before the discussions started. Now, I don't propose, whether I am overruled or not, to allow somebody to come in and put in some indiscriminate committee reports.

Exam. Taylor: Well, Mr. Childe, did you read the recent decision of the Supreme Court in the Chicago Livestock case, particularly Justice Stone's closing statement? I think it has peculiar meaning in what you are trying to do [fol. 1104] right here. He closed his decision with the statement about some of the parties in that case had attempted to ask the Commission to permit them to show on the record the conditions and costs and things of that character at stock yards throughout the country. The Interstate Commerce Commission would not permit them to go into that matter and in justifying, or in approving the Commission's action on that matter Mr. Justice Stone said: "There is a practical limit to which inquiry into collateral issues may be extended and pursued on the trivial." I think that has peculiar meaning in this question we have before us right now. If you wish to refer to any act of Congress or any decision of the Commission that has a real definite connection with this case I think you can do it. I think there isn't anybody in the room that would say you cannot do it, but when you commence to go out and get way out afield into matters that are more or less collateral I don't think that I can permit you to do that. That is my view.

Mr. Childe: Do I understand you to state that it is proper to refer to the statutes and Commission's reports? What is your ruling in reference to the reports of the Interstate Commerce committee in the House?

Exam. Taylor: Well, that is more or less a collateral matter. That is not an action by Congress. That is something before the thing became an act, leading up to it. Now, if you want to put it in, as I said you should have [fol. 1105] brought it here and put it in writing and let it all be on the record.

Mr. Childe: Well, we have it here but we haven't had time to put it in exhibit form.

Exam. Taylor: Mr. Cole, would you be willing to let him have ten days to put it in?

Mr. Cole: I would object to it if it were offered, if it were part of a committee's report, because it is definitely irrelevant; and, following up your citation on that, this case that you referred to, 227 I. C. C. 716, is the case that the Examiner referred to.

Exam. Taylor: I was referring to Justice Stone's decision.

Mr. Cole: Yes, you are referring to it in the Supreme Court.

Exam. Taylor: Yes.

Mr. Cole: I am referring to the decision in the same matter before the Interstate Commerce Commission.

Exam. Taylor: Yes.

Mr. Belnap: Might I be clear on this, Mr. Examiner? Are the comments and citation of authority directed to the general matter of testimony relating to the development of waterways and the purpose for which it was developed, or was it related to the committee reports?

Exam. Taylor: No, committee reports. If they object to that I cannot receive them.

By Mr. Childe:

Q. Col. Randolph, what has been the total cost of the improvement of the Illinois waterway for navigation pur- [fol. 1106] poses up to date? If you don't know it exactly state approximately.

A. Well, the drainage canal channel proper was approximately $60,000,000. The state bond issue of $20,000,000 was spent on the section between Lockport and Utica and that was supplemented by about seven and a half million dollars of federal funds.

By Mr. Day:

Q. Now, was that, so that we will understand that, just in the interest of clearing it up,—are these the figures for the recent work on the canal? You don't go back to 1833, do you?

A. No, that is not including the old Illinois and Michigan canal.

Q. This is the recent improvement?

A. I am talking about the sanitary and ship canal and the recent improvement on the river between Lockport and Utica.

Q. Well, it is the same waterway?
A. Same waterway.

Mr. Day: Thank you.

The Witness: I can't give you the totals since the beginning of this waterway. The two dams at Peoria and LaGrange I think have an aggregate cost of about six million, the new ones. The other stuff that has been scrapped, I don't know what the aggregate cost of that would be.

By Mr. Childe:

Q. During this same period has the federal government expended money on the improvement of the Great Lakes?

A. Well, it has been spending money on the improvement [fol. 1107] of the Great Lakes ever since it started them from year to year every year.

Exam. Taylor: Are you going into that, to ask him what the costs there are?

Mr. Childe: I was going to ask him next what the total cost was, if he knew.

Mr. Day: Since when?

Mr. Childe: Since the beginning.

Exam. Taylor: I think you are going too far afield now.

Mr. Childe: Do you rule the question is improper, Mr. Examiner?

Exam. Taylor: I rule you are getting too far afield on matter that is too much collateral.

By Mr. Childe:

Q. Has it been possible as a practical matter to navigate the Great Lakes to and from the Chicago harbor without the federal improvements to which you referred?

A. No, it would not have been possible on any of the lake harbors. They have all been improved by federal funds and the inter-lake channels also on the St. Clair and Detroit River and St. Mary's river and the locks at the Soo were not navigable.

Mr. Childe: That is all.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Randolph, do you know what the aim was, or the plan behind this improvement of the Illinois River and the [fol. 1108] connecting link up to Chicago to connect the river with the lake?

A. Yes, the improvement of the river for navigation.

Q. What was in the mind in connecting the river with the lake? What did anybody expect to happen when they connected the river by the canal with the lake?

A. They expected through commerce from the lakes down the river and down the Mississippi Valley and down to the Gulf.

Q. That could go in the reverse direction, too, couldn't it, the commerce via the river, thence through the canal and thence over the lake?

A. Yes, both ways.

Q. But to connect the river with the lake. Are you familiar at all with the methods of making freight rates for the movement of different kinds of commerce to and fro over the railroads?

A. Oh, I am not a rate expert.

Mr. Cole: That is all. That is all I have, thank you.

By Mr. Day:

Q. Col. Randolph, in your figures showing the cost of what I will call your modern construction and improvements to the canal or waterway did you include the Calumet Sag channel?

A. No.

Q. What would be the cost of that?

A. Well, I think the present approved project I believe the estimates run something like thirty million for that.

Q. You mean there has been thirty million dollars expended?

[fol. 1109] A. No, the estimates for the enlargement.

Q. Is that thirty million in addition to what has already been spent?

A. Yes.

Q. How much has the cost been up to date?

A. I think approximately fourteen million was the cost of the Calumet Sag channel.

Q. That was built when? Was it started about 1914?

A. About 1914, yes.

Q. And in the movement of grain from points on the Illinois River to elevators around South Chicago the movement would be through that particular channel, wouldn't it?

A. That would be the logical route for it, yes.

Mr. Day: I think that is all I have, thank you.

By Mr. Enoch:

Q. Give me the total figure of expenditure beginning with and including the $20,000,000 put into this waterway improvement of Utica east which is used to transport grain from points Utica east to Chicago, including the expenditure of the money put into the Calumet Sag.

A. Well, there was added to the $20,000,000 a federal expenditure of about seven and a half million on the route from Lockhart to Utica. I couldn't proportion the cost of the main drainage channel from Lockport to the Calumet Sag.

Q. Well, about how much? These figures don't mean much to me anyway after you get over a million.

[fol. 1110] A. Well, the total cost of the main drainage channel was about $60,000,000. The Sag is about half of this, which would give you $30,000,000 to the Sag and another $14,000,000 through the Sag canal.

Q. Would it be safe if we would state it this way, that for the purpose of enabling shippers to transport commodities east from Utica over this waterway to Chicago that the taxpayers of Illinois and the United States spent at least $60,000,000?

A. No, because you cannot charge all that to that single purpose. The primary purpose was a sanitary purpose and the canal, the navigation of it, was a by-product through the continental divide.

Q. Well, I mean to enable any shipper to use the waterway from Utica east.

A. Well, as I have stated——

Q. One of my colleagues has just given me a figure of $136,000,000. Has that much money been put into that waterway between Utica and Chicago?

A. There has not been, no.

Mr. Day: To refresh your recollection, I marked the amounts you gave: 60 million, 25 million, seven and a half

million, just recently for two dams 6 million around LaGrange and Lockport.

The Witness: He is talking about from Utica east to Chicago. Those two dams are down below Peoria.

Mr. Day: Oh, I see. You mentioned "LaGrange." I [fol. 1111] thought it was right up around here.

The Witness: No, it is near Peoria.

By Mr. Enoch:

Q. Could we say safely between sixty and a hundred million?

A. Yes, roughly, but not all of it was particularly chargeable to navigation because the primary purpose of the main drainage channel was sanitation, to cut through the rock back of the continental divide, and the waterway was a by-product of that sanitary necessity.

Q. Well, can we say this, that to get from Utica to Lockport at least $30,000,000 was put in for this transportation?

A. Well, there was at least 27½ million from Utica to Lockport.

Q. How many miles is that?

A. It is about 63 miles.

Q. It would be a pretty expensive railroad if you double tracked it, wouldn't it, if you put half a million a mile in it?

A. It would be a pretty expensive railroad, yes.

Mr. Enoch: That is all.

By Mr. Brown:

Q. Col. Randolph, you have just said, I believe, that the improvement of the Illinois waterway was first a sanitary project?

A. No.

Q. From the mouth of the Chicago River down?

A. The ship canal through the continental divide was a sanitary project first. That is, from Chicago to Lockport. [fol. 1112] Q. Yes, all right. And then the question of navigation or transportation was secondary?

A. Yes.

Q. Well, now, these recent improvements that have been made at the -outh of the river, wasn't that also made for sanitation?

A. That gate at the mouth of the river is not in the aid of navigation at all. It is an impediment to navigation. That was a thing that was forced on us by the Supreme Court decree limiting the withdrawal of water from Lake Michigan to 1500 cubic feet and was built to limit the flow of water from the lake into the river and it is not chargeable to navigation.

Q. And also to prevent pollution?

A. Also to prevent pollution of the water supply by the water flowing from the river.

Q. Now, are there any expensive locks between here and Peoria?

A. Yes, there are five locks. One at the end of the drainage canal.

Q. At Lockport?

A. At Lockport; Brandon's Road below Joliet; a lock at the mouth of the Kankakee at Dresden Heights and the lock and dam at Marseilles and the lock and dam at Starved Rock. Then in the lower river there is the lock at Peoria, lock and dam at Peoria and one at Henry—one at La-Grange, I mean.

Q. Now, is there any charge made for the service of putting these river boats through those locks?

[fol. 1113] A. No charge.

Mr. Brown: That is all.

Exam. Taylor: Anything on redirect?

Mr. Childe: No, sir.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: It is very evident, gentlemen, that we can not finish here. The free copy for respondent goes to Mr. Cole?

Mr. Cole: Yes.

Exam. Taylor: And the free copy for the protestants to Mr. Belnap. Now, as to a future hearing in this proceeding, there are a number of reasons why I cannot set it at this time, among which I will state, as you all know, there is going to be a grain hearing in Chicago in the beginning of the new year. Another reason is that I haven't been home since the first of December and I don't know what

the Commission's docket is, how it is fixed up as to available dates in Washington. In those circumstances I don't see anything to do but to adjourn this hearing to such time and place as the Commission may see fit to fix. Now, if any of you have any statement to make on that briefly, or if you will let it go at that and want to take it up with the Chief Examiner, it is perfectly satisfactory to me.

Mr. Enoch: Do I understand now from Mr. Belnap's [fol. 1114] statement that only one of these shippers will have a man take the stand, is that right?

Mr. Belnap: I thought I would have one of them speak for the group, Mr. Enoch. They have been together in this matter continuously and he can state all the facts. I thought that would be satisfactory.

Mr. Enoch: I appreciate the fact that it is up to us to show or see that the facts get in here that we think are important. We have no right to rely on the other parties.

Mr. Belnap: You are perfectly safe in doing so, yes.

Mr. Enoch: We are very anxious to have the character of the transportation agency which moved this grain up the river described as to the facts and it may be that if these protestants do not undertake to present those facts we will find ourselves in the position where the burden will be upon us.

Exam. Taylor: Have you anything to say, Mr. Brown?

Mr. Brown: I have, if you please. Representing an important factor in this proceeding and realizing that more than two months of the suspension period has already passed I want the Commission to know that I think that the adjourned hearing should be held as early as can be with the itinerary or the commitments of the present Examiner. I don't know how soon you may be released but I want the Commission to know that we don't want a moment's delay because of some other case, whether it is the grain case or not. Now, this other case comes up on a [fol. 1115] petition of the western carriers, the one you have in mind. It involves 17,000, Part 7. It was first set for January 9th and the Commission set it forward for January 3rd next year. Our particular case they set back instead of setting it ahead and I just want them to know that I think it ought to continue in the same hands and just as early as it can possibly be begun.

Mr. Enoch: So far as the Western carriers are concerned our position is the same as Mr. Brown. We do

not care to have the Examiner do anything, so for as setting this case is concerned, by paying any particular attention to the fact that that case is now set for January 3rd.

Exam. Taylor: In other words, it would not inconvenience you if this was set for January 3rd?

Mr. Enoch: No, it would not.

Mr. Belnap: I have this to say, Mr. Examiner: We would much prefer to have you come back to Chicago to complete the heading. Now, if the Commission is unwilling to send an Examiner out to just complete the hearing in one case we are quite willing to go to Washington, except for this fact, that there are about five or six witnesses, they are not my witnesses, they are Mr. Macaulay's particularly, who I don't think can be taken to Washington because they are people who will come in to Chicago and in that event one way it could be worked out is to have, at a convenient time and place, the evidence of the local people down in the country taken simply by deposition.

[fol. 1116] Exam. Taylor: Well, that necessarily would have to be 10 days prior to any further hearing, according — the rules of practice.

Mr. Enoch: I don't understand that Mr. Macaulay——

Mr. Belnap: And Mr. Root, his additional witnesses will be at the further hearing.

Exam. Taylor: You will have to make the proper request for that.

Mr. Belnap: Well, that would depend, Mr. Examiner, you see on whether you were coming back here, in which case that would be unnecessary, as against whether the hearing might go to Washington, but Mr. Macaulay could advise the Chief Examiner immediately of his situation as to that so that could be taken into consideration when the Chief Examiner determines what to do with the case.

Exam. Taylor: Yes. Suppose you do that, Mr. Macaulay.

Mr. Macaulay: Advise the Chief Examiner as to what disposition I would like to be made?

Exam. Taylor: Whether you would like prompt action on the setting of the case, for continuing the case.

Mr. Macaulay: As far as we are concerned we want prompt action. We would much prefer, of course, to come here before you.

Exam. Taylor: If it is not set here what we want you

to do, if you see proper, is to take up with the Chief [fol. 1117] Examiner the prompt disposition of the case so that you could make a request that depositions be taken from witnesses who could not come to Washington.

Mr. Macaulay: I see.

Mr. Glover: Mr. Examiner, I happen to represent the W. J. Small Company at Fairfax in the Kansas City, Kansas district. They are interested in the rates on the barge line from Kansas City to Peoria, St. Louis and Chicago and the tariffs under protest or under suspension which make provision for the continued application of the proportional rates east of those points on the traffic via the barge line from Kansas City.

Exam. Taylor: Where they are published and fied with the Interstate Commerce Commission?

Mr. Glover: Yes, where they are published and filed with the Interstate Commerce Commission.

Exam. Taylor: Yes.

Mr. Glover: Now, from what I can see from what has been said so far there has been no testimony offered in connection with those rates. I don't know whether protestants intend to put anything in regarding them or not. I don't know whether they would care to say.

Exam. Taylor: Mr. Oliphant hasn't put his testimony on yet.

Mr. Glover: I understand that.

Exam. Taylor: And I imagine that was what you were waiting for to see what your position would be.

[fols. 1118-1119] Mr. Glover: That is right.

Exam. Taylor: So that you are in a position that you don't know where you are.

Mr. Glover: I don't know whether I should come back or not, Mr. Examiner. I don't know whether Mr. Oliphant wishes to say anything or not.

Exam. Taylor: Mr. Oliphant, unfortunately, could not be here. He had to catch a train.

Mr. Glover: Well, I will just let the matter stand then, Mr. Examiner.

Exam. Taylor: All right. Gentlemen, the case will stand adjourned to such time as the Commission may fix for further hearing.

(Whereupon, at 5:35 o'clock p. m., the hearing was adjourned.)

[fols. 1120-1121] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. I. & S. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

Morrison Hotel,
Chicago, Illinois,
January 17, 1940.

Met, pursuant to notice, at 10 o'clock A. M.

Before R. G. Taylor, Examiner

APPEARANCES:

As heretofore noted, and the following additional:

Charles D. Miller, 135 South La Salle Street, Chicago, Illinois, appearing for American Maize Company.

[fol. 1122] PROCEEDINGS

Exam. Taylor: Come to order, please, gentlemen. The Interstate Commerce Commission has set for further hearing at this time and place Investigation & Suspension Docket No. 4718, Grain Proportionals Ex-Barge To Official Territory. Are there any further appearances to be entered at this time? The reporter has been handed a written appearance of Mr. Miller. Mr. Miller, do you wish to make an oral appearance at this time?

Mr. Garrison: I filed the appearance. Mr. Miller will be here later, but he wanted me to enter his appearance. He will be up a little later.

Exam. Taylor: Are there any additional appearances to be entered at this time? (No response.) Mr. Brown, I believe you have something you wish to put on this morning?

Mr. Brown: If you please. Mr. Benson has an exhibit, partly new and partly substitute for exhibit 19. He will explain it.

S. H. BENSON was recalled, having been previously sworn, and testified further as follows:

By Exam. Taylor:

Q. Mr. Benson, you were previously sworn in this case?
A. Yes.

Exam. Taylor: Proceed.
The Witness: May I proceed?
[fol. 1123] Exam. Taylor: Proceed, Mr. Brown.

Direct examination.

By Mr. Brown:

Q. Go ahead, Mr. Benson, and present this exhibit.
A. I desire to withdraw sheets 9 to 15 inclusive, of my exhibit 19. Therefore, all reference thereto in the record should be disregarded.

By Mr. Enoch:

Q. What was that number, please?
A. 9 to 15.

Mr. Brown: 9 to 15.
Mr. Enoch: All right.

The Witness: These sheets 9 to 15 inclusive, show the receipts of grain at Chicago for the first ten months in 1938 and 1939, and it is our purpose to rely on the statistics of the receipts of grain at Chicago for the calendar years 1932 to 1939, inclusive, as printed in the annual reports of the Board of Trade of the City of Chicago. Therefore, as far as exhibit 19 is concerned, we desire to confine it to sheets 1 to 8, inclusive. I desire to present an additional exhibit containing the following statistics:—

Exam. Taylor: That will be known as exhibit 38.

(Exhibit No. 38 marked for identification.)

By Mr. Brown:

Q. Proceed, Mr. Benson.
A. On sheet 1 are shown the receipts of all grains at Chicago via all routes for the entire year of 1939. Sheet 2 is a comparison of the receipts of corn at Chicago via [fol. 1124] the various routes for the years 1932 to 1939, inclusive, along with the production of corn in Illinois for the years 1931 to 1938, inclusive. The information shown on this sheet 2 is that shown on sheet 8 of exhibit 19, except that as to 1939 the statistics are for the entire year instead of for the first ten months. Sheet 3 is a comparison of the receipts of corn at Chicago via the various

routes for the years 1938 and 1939, there being shown the percentage via each route of the total receipts for each of those years.

In 1939 the receipts of corn via the Illinois Waterway amounted to 15.72 per cent of the total receipts of corn for that year, while in 1938 they were 7.54 per cent of the total corn receipts for that year. Likewise, the receipts of corn by truck were greater in 1939 than in 1938, both in volume and in the ratio of percentage of the total receipts. In 1938 the amount of corn trucked in was 1.94 per cent of the total receipts of corn; whereas in 1939 the trucked in corn was 5.96 per cent of the total corn receipts.

With three slight exceptions, the percentage of the receipts of corn via the various railroads compared with the total corn receipts was less in 1939 than in 1938. The total receipts of corn via rail in 1939 amounted to 53.53 per cent of the total receipts of corn for 1938, but the total corn receipts via all the routes in 1939 were 61.87 per cent of the total corn receipts for 1938. This increase in 1939 over 1938 of the total receipts of corn is accounted for by [fol. 1125] the heavier receipts in 1939 by barge via the Illinois Waterway and by truck. On sheets 4 to 7 inclusive of this exhibit No. 38 are shown the shipments of all grains from Chicago via all routes for the years 1932 to 1939, inclusive, as shown in the printed annual reports of the Chicago Board of Trade. These statistics on sheets 4 to 7 inclusive are being furnished at the request of Mr. Belnap.

Exam. Taylor: Is that all?

The Witness: Yes.

Exam. Taylor: Are there any questions?

Mr. Brown: I offer him for cross-examination.

Exam. Taylor: Are there any questions by counsel for the railroads?

Mr. Day: I have no questions.

Exam. Taylor: Mr. Belnap, have you any cross-examination?

Mr. Belnap: I would like to inquire, Mr. Examiner, as to the present status of pages 9 to 12 of exhibit 19. They have been offered and received in evidence. There has been no subsquent ruling. I am perfectly willing to have them considered as no longer in evidence, but it seems

to me it takes an agreement or ruling to have them withdrawn or removed from the record.

Mr. Day: The witness said he was withdrawing sheets 9 to 15.

Mr. Belnap: I said, 9 to 15.

Mr. Day: You said, 9 to 12.

[fol. 1126] Mr. Belnap: I beg your pardon. 9 to 15, of exhibit No. 19.

By Exam. Taylor:

Q. Mr. Benson, does exhibit No. 38 show the information previously contained in exhibit 19, pages 9 to 15 brought up to date with additional information?

A. It does, with this one exception, that certain of the sheets, 12 to 15 inclusive, segregate the information according to the deliveries at the elevators and only for the first ten months of 1938 and 1939. What we are doing now is to put into the record the statistics as shown in our printed annual Board of Trade reports for entire years.

Exam. Taylor: Is that clear, Mr. Belnap?

Mr. Belnap: No, it is not, Mr. Examiner. I still think we have to have some ruling or stipulation in the record in order to be sure that we know the status of these pages that the witness says he is willing to withdraw.

Actually, he is taking some data completely out of the record, which is entirely all right with me, but Mr. Brown has explained, as I understand it, that they want to take the figures out because they cannot reconcile them with the annual reports. Is that correct, Mr. Brown?

Mr. Brown: That is right.

Mr. Belnap: As far as that is concerned, I am perfectly willing to have them go out.

Exam. Taylor: Are the parties willing to make that stipu-

[fol. 1127] lation? Is there any objection to it?

Mr. Macaulay: Mr. Examiner.

Exam. Taylor: Mr. Macaulay.

Mr. Macaulay: I find there is no information in the new exhibit pertaining to the amount of wheat, oats, rye, barley and soy beans arriving at Chicago during 1938. Apparently that is eliminated in the new exhibit, and if those figures are from proper sources, it seems to me that those

pages should remain in the exhibit for whatever they are worth.

Mr. Brown: Sheets 1 to 8 of the original exhibit No. 19 stand in the record.

Mr. Macaulay: That is right. On sheet 9 there is information which is not contained in your new exhibit.

Mr. Brown: You will find a substitute for it, I am quite sure.

Mr. Macaulay: Will you point out, Mr. Benson——

Mr. Brown: We show on the first sheet of exhibit 38 complete information for the year 1938.

Mr. Macaulay: 1939, it says in mine.

Mr. Brown: You will find that in the other exhibit. We did give complete information for that year.

The Witness: On sheet 7 of exhibit 19.

By Mr. Belnap:

Q. What pages do you want to withdraw? What is the first page you want to withdraw from exhibit No. 19?

A. Sheet 9.

[fol. 1128] Q. Sheet 9 covers——

A. Sheet 9 covers the first ten months of 1938. Sheet 7 of that exhibit gives statistics for the entire year.

By Mr. Day:

Q. You mean, sheet 7 of 38?

A. No. Sheet 7 of exhibit 19, the original exhibit.

By Mr. Belnap:

Q. Am I to understand that sheet 9 is really a repetition of sheet 7, except that it contains the entire year 1938?

A. That is substantially true, yes.

Q. In what way is it not true?

A. There is some difficulty in reconciling the figures. There is an overlapping, and one thing and another.

Mr. Macaulay: What I have in mind is this:

By Mr. Macaulay:

Q. Sheet 7 is the compilation of the figures arriving during the year 1938?

A. That is true, yes, sir.

Q. Then really what you are doing is taking out sheet 9, because it is a duplication of 7 and eliminating page 10, because it is brought up to date in the new exhibit?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Then you are eliminating the sheets with reference to the place where the grain was delivered to the elevators it went to?

A. That is the only real change.

[fol. 1129] Q. That is the only real change?

A. Yes.

Mr. Macaulay: If that is the only real change, I have no objection.

Exam. Taylor: No objection?

Mr. Day: That makes it unanimous.

Exam. Taylor: If there is no objection, the pages mentioned will be withdrawn, inasmuch as these pages will be shown in exhibit No. 38. Exhibit No. 38 will be received in evidence.

(Exhibit No. 38, Witness Benson, received in evidence.)

Exam. Taylor: Are there any further questions?

Mr. Belnap: Yes.

Cross-examination.

By Mr. Belnap:

Q. Mr. Benson, in your opinion has the transportation of grain via barge on the Illinois waterways increased the volume of the annual receipts at Chicago against what they would have been if barge transportation had not taken place?

Mr. Brown: I object. He has no means of knowing that.

Exam. Taylor: Is it not true that that can be ascertained in this exhibit?

Mr. Brown: I think so.

Exam. Taylor: Sir?

Mr. Brown: He wants him to do a little speculating. He wants him—he asked him if the total receipts were not increased by reason of the Illinois waterways.

[fol. 1130] Exam. Taylor: That is shown on this exhibit.

Mr. Brown: He cannot go beyond that, because he is

merely presenting what is shown in the annual report of the Chicago Board of Trade.

Exam. Taylor: He can testify from that. You can testify from your exhibit.

The Witness: As I understand it, the question of Mr. Belnap is, if there had been no barge movement at all and the Chicago market was dependent altogether upon the rails, whether receipts would have been just as much as they have been via barge?

Mr. Belnap: I am particularly interested in the opinion of this witness who presents the tonnage statistics for the Chicago Board of Trade, as I understand it, as to whether or not the barge movement has not been an influence in increasing the volume to Chicago.

The Witness: That must be a matter of speculation.

By Mr. Belnap:

Q. Have you any opinion about it?

A. I would say it is possible, perhaps probable, that the receipts were increased to some extent by the movement via barge.

Q. Is it in the interest of the Chicago Board of Trade to have an increased volume moved through its market?

A. It is, to some extent.

Q. That interest is served by the waterway movement, is it not?

A. Yes, to some extent.

[fol. 1131] Q. Does that benefit those located in your market in the merchandising or purchasing of grain, cash grain at the market?

A. To some extent.

Q. To what extent does it not?

Mr. Day: I object to this line of questioning. It seems to me it is going beyond the scope of the witness' direct examination. As I understand it, the witness is a rate, traffic and tariff man, who has simply tendered here figures taken from reports of the Chicago Board of Trade. He can be questioned as to the contents of the exhibit, which he offered, or even on his earlier exhibit; but it seems to me it is going beyond the scope of the direct to ask him about whether Chicago as a market is advantaged by river transportation. I do not think the witness is qualified to answer that.

Exam. Taylor: Read the question, please, Mr. Reporter.

(Question read.)

A. Well, when I say "to some extent"——

Mr. Day: Just a minute.
The Witness: Pardon me.
Mr. Day: There is an objection.
Exam. Taylor: He may answer if he knows.
Mr. Day: Exception.
Mr. Belnap: All right.
Mr. Brown: Mr. Benson, if you do not know to what extent, you ought to say so.
[fol. 1132] The Witness: When I say "to some extent", I naturally mean to the extent of the interest of some of the members of the Board of Trade. It is undeniable that some of the members of the Board of Trade are benefited by this barge movement. It follows that they are benefited to some extent.

By Mr. Belnap:

Q. That is, the people who deal in the grain, and buy it? Is that what you mean?
A. I refer to the members of the Board of Trade that receive this grain.
Q. The people who deal in the grain, buy the grain, members of the Chicago Board of Trade, are benefited by an increased volume through the market, are they not?
A. There is no doubt about that. They would not be in business if they did not.

By Mr. Day:

Q. Are you talking about people who float this grain on the river?
A. I am talking about the members of the Board of Trade receiving this grain. Naturally they are benefited to that extent.
Q. That is the river grain?
A. All I am saying is what is self-evident on the face of it.

By Mr. Belnap:

Q. That portion of your membership is benefited by anything which increases the volume through the Chicago market, is it not?

Mr. Enoch: I object to that. I object to any further inquiry of this witness along that line on the ground that it is [fol. 1133] an attempt to cast some reflection on the judgment and policy pursued by the Board of Trade in entering opposition here to what Mr. Belnap wants to do. I do not think the Commission is interested in whether the Board of Trade is exercising good judgment from its own selfish standpoint or not, in connection with this proceeding.

Mr. Belnap: I did not quite get the legal ground for the objection. The purpose, or the point I was trying to get at, Mr. Examiner——

Exam. Taylor: I think you are going too far into this question as to the Board of Trade.

Mr. Belnap: I was simply trying to inquire to what extent the rate situation which is now in effect is helpful to the Chicago Board of Trade, and then if there is something that does not help, I would like to find out about that. I should think that fact would be relevant in the proceeding, as to who is helped and who is hurt by the rate situation which is under review. You have ruled, so I will desist from further questioning along that line. However, I want to make my position clear.

Exam. Taylor: The ruling has been made. Proceed.

Mr. Belnap: I have no further questions if the objection to that line of testimony is sustained. That is all I want to ask about.

Exam. Taylor: Proceed.

Mr. Belnap: I have no further questions.

[fol. 1134] Exam. Taylor: Mr. Root?

Mr. Root: No questions, your Honor.

Exam Taylor: Mr. Macaulay?

Mr. Macaulay: No.

Exam. Taylor: Are there any further questions of this witness? (No response.) If not, you are excused.

(Witness excused.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Call your first witness, Mr. Root.
Mr. Root: Mr. O. B. Robbins.
Exam. Taylor: Raise your right hand and be sworn.

O. B. Robbins, was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. O. B. Robbins, Morris, Illinois.
Q. Mr. Robbins, just speak up loud enough so every one in the hearing room can hear you. In this big room it is hard to hear.
A. O. B. Robbins, Morris, Illinois.
Q. Mr. Robbins, have you prepared a statement to make—let me withdraw that. Will you state your business or occupation, Mr. Robbins.
A. I am manager of the Allied Grain Dealers Corporation of Morris.
[fol. 1135] Q. That is the Allied group which has been referred to so often in the testimony in this case?
A. Yes, sir.
Q. Have you prepared a statement which you would like to make for the record in this proceeding?
A. I have.
Q. Will you kindly make that statement.
A. I am manager of the Co-Operative Allied Grain Dealers Corporation of Morris, Illinois, and operate elevators on the north bank of the Illinois River at Morris, and Seneca, Illinois. Due to the fact that the Board of Trade Examiner in cross examination has alluded several times to the Co-Operative Allied Grain Dealers Corporation——

Mr. Day: Just a minute, please.
The Witness: Yes.
Mr. Day: I think the witness is confused. What Board of Trade Examiner are you talking about?
Mr. Root: The Chicago Board of Trade Examiner.
The Witness: The Chicago Board of Trade Examiner.
Mr. Day: Is that some examiner in this hearing?
Mr. Root: He is just trying to straighten out when this thing was organized. You will recall that Mr. Brown, and I think yourself, asked a lot of questions about Allied. He was just explaining——

Mr. Day: I did not know but what he meant the Commis-
[fol. 1136] sion Examiner.

The Witness: No.

Mr. Root: No.

Mr. Day: I want to be straight on the record.

The Witness: Mr. Brown, from the Board of Trade. Mr. Brown was the examiner.

By Mr. Day:

Q. Mr. Brown, sitting over here (indicating)?

A. Yes.

Q. He is the one you referred to as the Board of Trade Examiner?

A. That is right.

Mr. Day: I just wanted to get that straightened out on the record.

By Mr. Root:

Q. Proceed, please, Mr. Robbins.

A. I wish to state that this is a cooperative corporation organized March 8th, 1938, under the business Corporation Act in force July 13th, A. D., 1933. The company was organized and the stock subscribed by 21 cooperative and privately owned elevators within 30 miles of Morris. All the elevators within the Morris territory were solicited to participate in the ownership of the business and the opportunity is still open to any recognized grain dealer. We buy from any recognized grain dealer whether member or not. Our bids are the same to members and non-members and we buy from elevators only.

No high pressure salesmanship was used to induce anyone to become a member. Those who joined did so in order
[fol. 1137] to avail themselves of the cheaper transportation afforded by the Illinois waterway. The organization of the Co-Operative Allied Grain Dealers Corporation was made necessary by the spasmodic competition of truckers hauling corn direct from the farm to several large elevator concerns in Chicago. It was organized with an authorized capital stock of $50,000.00. The incorporators were G. E. Mellen, F. W. Finch, Chester A. Hunt, R. A. McClelland, Charles Treasure and O. B. Robbins. Lowell Hoit & Company or no other commission company has ever put one dollar in the organization.

Since starting in business June 1st, 1938, and up to December 1st, 1939, we have handled cooperatively for these 21 members and for some 27 other dealers, who wished to avail themselves of our facilities, 6,250,000 bushels of grain——

Mr. Enoch: Just a minute, please, Mr. Robbins.
The Witness: Yes.

By Mr. Enoch:

Q. Will you give me those dates again, please?
A. June 1, 1938, and December 1, 1939.
Q. To December 1, 1939?
A. Yes.

Mr. Enoch: All right.

By Mr. Root:

Q. Go ahead, Mr. Robbins. Give the bushels again.
A. 6,250,000 bushels of grain, mostly corn and beans. 88 per cent of the business done came from members and 12 [fol. 1138] per cent from non-members. All the profits of the business, except a small reserve fund and 7 per cent dividend paid on the stock was pro-rated back to the members in proportion to the business done, which enabled them to pay better prices to their farmer customers. The grain came to Morris only because the price was higher than could be paid for rail shipment.

Mr. Enoch: Mr. Root, have your witness read a little slower, please. It is difficult to follow when it is being read so rapidly.

Mr. Root: Yes. Read a little slower.

By Mr. Root:

Q. Proceed.
A. I wish to offer in evidence a copy of our by-laws and a list of the grain purchased and the station from which it came.

Mr. Root: Mr. Examiner, we have a set of several exhibits. Shall we number them off the record?
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Let the record show that exhibits Nos. 39 to 44 both inclusive have been identified.

(Exhibits Nos. 39 to 44 both inclusive, marked for identification.)

The Witness: Bids C. I. F. Chicago are given us by different commission merchants——

Mr. Root: Just a minute, now.

By Mr. Root:

Q. Copies of the by-laws are marked exhibit what, Mr. [fol. 1139] Robbins?

A. That is exhibit No. 39.

Q. Exhibit 39?

A. Yes.

Q. All right. Proceed.

A. Shall I proceed with this statement?

Q. And the stations from whence it came. That is, the map.

A. That is included on this map.

Q. That is exhibit No. 44?

A. That is right.

Q. All right. I think we are straight. Go ahead.

A. Bids C. I. F. Chicago are given to us by different commission merchants and terminal elevator operators each day as soon as the bid is posted. We deduct from this the cost of placing the corn in Chicago and the trimming charge. This deduction is 2.225 cents per bushel, broken up as follows: freight, 1.75 cents per bushel; trimming, .35 cents per bushel; and weighing inspection, .15 cents per bushel. We also deduct our handling cost and a small profit, and this then is a basis for our bid to our customers, as all our bids are F. O. B. Morris or Seneca.

The dealers in our territory get our bids by phone as soon as we can put them out after the market closes. If our bids are higher than the rail bids, trucking considered, they sell to us. If not they sell where they can get the most money for their farmer customers, all transportation con- [fol. 1140] sidered. When the dealer sells to us we mail him a confirmation of sale, stating the dealer's name and place of business, the kind and amount of grain sold, the grade, the price, the time of delivery, the discounts deduct-

ible in case the grain does not grade. A copy of confirmation of sale is offered in evidence.

Q. That is exhibit No. 40?

A. Exhibit No. 40.

Q. Proceed with your statement.

A. When the farmer from whom the corn is purchased by the dealer is ready to shell he notifies the dealer who acts as his agent in getting a sheller and the necessary trucks for handling the job. The corn is then trucked direct to the river elevator as 90 per cent of the grain we receive comes to us direct and does not pass through country elevator. This of course lessens the cost of handling as it only necessitates one elevation.

When the corn reaches our plant it is weighed over a 30-ton registering beam scale. A sample is taken from each load and tested for weight, moisture, damage, foreign material and color. After determining the grade a discount is established if the corn does not grade up to the grade purchased. An account sale is rendered to the country elevator each morning, each load is made up in detail showing the farmer from whose farm the grain came. The kind and grade of the grain, the amount, the number of the loads, the haulers name, the ticket number and the weight. A copy of account sale is offered in evidence.

[fol. 1141] Q. That is exhibit No. 41, Mr. Robbins?

A. That is 41, yes, sir.

Q. Proceed.

A. A check is rendered in full payment to each elevator delivering us grain each morning showing the amount and kind of each lot of grain, the contract upon which it is applied, the price and the total amount, both of bushels and money. A copy of our check is offered in evidence.

Q. That is exhibit No. 42, is that correct?

A. That is right.

Q. Go ahead.

A. I missed that ticket—exhibit No. 39, I believe it is.

Q. No. We are coming to that.

A. Oh, yes.

Q. Just go ahead with your statement.

A. The dealer also receives a ticket for each load of grain showing the date received, the number of the ticket, the farm from which the grain came, the trucker's name and the weigher's name. Stamped on the ticket by the regis-

tering beam scale are the gross and tare weight of the load, so there can be no mistake in reading the scale beam and the farmer receives these tickets when he settles for his grain. One of these tickets is attached to my exhibit.

Q. That has been marked exhibit No. 43 for identification?

A. 43.

[fol. 1142] Q. Go ahead.

A. Due to the difficulty we experienced in securing barges the first year we were in business and in order to protect ourselves against a recurrence of this difficulty we organized a barge corporation November 15th, 1938, with a capital stock of $50,000. We purchased four Dravo barges having a capacity of 30,000 bushels each.

Mr. Enoch: Not so fast.

By Mr. Enoch:

Q. What was that last statement, please?

A. Due to the difficulty we experienced in securing barges the first year we were in business and in order to protect ourselves against a recurrence of this difficulty we organized a barge corporation November 15th, 1938, with a capital stock of $50,000. We purchased four Dravo barges having a capacity of 30,000 bushels each. When I say "we", I mean the barge company.

By Mr. Root:

Q. Proceed with your statement, please, Mr. Robbins.

A. As the grain is delivered to us it is either elevated into an elevator bin or run direct into a grain barge as circumstances permit. After the barge is loaded, the barge company who is pushing our barges is notified. A river straight bill of lading is made out and signed and the grain is ready to be on its way to market.

Mr. Day: Just a minute, right there.

[fol. 1143] By Mr. Day:

Q. You said you notify the barge company?

A. That is right.

Q. Who pushes your barge?

A. That is right.

Mr. Root: In order to straighten that out, let me ask you this:

By Mr. Root:

Q. Do you mean, the gentleman who furnished the tug for towage?
A. That is right.
Q. You refer to the Barge Corporation in that sense?
A. It is the barge company. It is a different barge company.
Q. A separate and distinct corporation?
A. Yes.

Mr. Day: May we be off the record?
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.
Mr. Day: Read that last statement again, please.

(The record was read.)

Mr. Day: Do I understand that he meant towing company, when he said barge company?
The Witness: No. I meant, barge company.

By Mr. Root:

Q. You distinguish that from the Allied Barge Corporation, of course, Mr. Robbins?
A. (No answer.)
[fol. 1144] Q. Is that correct?
A. It happens to be Mr. Mechling, A. L. Mechling Barge Company.
Q. For the purpose of the record, would you state whether or not the Allied Barge Corporation has any tugs or pusher boats?
A. No. The Allied Barge Corporation has no pushers.
Q. They have only barges?
A. They have only four barges.
Q. Proceed.
A. When the tug boat arrives to pick up the barge the captain or pilot signs the bill of lading and picks up one copy, leaving us two copies; one of these is retained for

our files and the other deposited in the bank with draft attached.

Exam. Taylor: Let me interrupt you right there.
The Witness: Yes.

By Exam. Taylor:

Q. You have not furnished a copy of the bill of lading?
A. No.

Exam. Taylor: Will one be furnished later on, Mr. Root? He just mentioned a bill of lading.

Mr. Root: Yes. I think we could furnish one before the hearing is over. We do not happen to have one here.

Exam. Taylor: Will you attempt to do that this afternoon or tomorrow morning?

Mr. Root: I think I can get it tomorrow. I do not think I can get it this afternoon.

[fol. 1145] Exam. Taylor: Very well. Proceed.

The Witness: Those asking to have the reshipping rate——

Mr. Enoch: May we ask by whom and to whom—by whom is the bill of lading issued, and to whom is it issued?

Mr. Root: May I say something?

Mr. Enoch: I will not interrupt you.

Mr. Root: He is almost through.

Mr. Enoch: All right.

Mr. Root: I think Mr. Robbins will be subject to cross examination anyway.

Mr. Enoch: I will withdraw it.

By Mr. Root:

Q. Continue with your statement, please, Mr. Robbins.

A. Those asking to have the reshipping rate on barge grain cancelled are contending that the grain dealers of Illinois are losing their business by reason of the trucks and river business. I wish to state that all 23 members of the Allied Grain Dealers Corporation who are using our facilities are handling just as much grain today as they have ever handled and our facilities are open to every grain dealer within economical hauling distance of Morris or Seneca.

I believe the cancellation of the reshipping rate on barge grain will cut the price we can pay for grain at certain

times of the year, as the price of grain is determined largely by the elasticity of the movement of the grain. [fol. 1146] Corn, after it reaches Chicago, is the same price whether it comes in by barge at 3 cents per hundred or whether it pays an inbound rate of 12 cents per hundred as all corn is sold F. O. B. Chicago. The only difference is that the farmer in the Illinois River Valley receives 2 cents to 2½ cents or more per bushel more for his corn than his less fortunate neighbor who is too far away to ship by water.

If the reshipping rate on barge grain is cancelled, I believe the difference on the Chicago market will be wider between the I. P. billing and the lake billing corn than might appear by the difference in rates.

Mr. Enoch: I do not think that is the right kind of testimony. If he has not got much more, I am not going to make any objection. How much more have you got?

Mr. Root: 10 lines.

The Witness: Just another paragraph.

Mr. Root: He is merely expressing an opinion.

By Mr. Root:

Q. Continue, Mr. Robbins.

A. In other words, I believe the barge shipper will be penalized because all barge and intrastate billing corn will either have to go out by lake or be sold locally and the supply of this corn being so much in excess of the local requirements it will be purchased at enough discount to compensate the buyer for holding the corn until the season of open lake navigation.

We as an organization will probably have to do one [fol. 1147] thing. We probably will have to either buy or lease a terminal elevator equipped for loading steamers so that we can hold our barge shipments through the winter until lake navigation opens.

Q. Mr. Robbins, in your statement you mentioned that the Co-Operative Allied Grain Dealers Corporation was organized under the Business Corporation Act in force July 13, A. D., 1933.

A. Yes.

Q. Is that the Illinois Business Act?

A. That is the Business Act of the state of Illinois, yes, sir.

Q. You mentioned in your statement that Lowell Hoit & Company or no other commission company has ever put one dollar in your organization.

A. Yes.

Q. Have they ever loaned you any money?

A. No, sir. They never have loaned us any money.

Q. Do they own any stock at all in it?

A. They own no stock in our organization, no, sir.

Q. Does any commission house or grain house have any connection whatsoever with the Allied group?

A. None whatever.

Q. Except the business of selling to each one as you see fit?

A. That is right.

Q. Mr. Robbins, in your statement you mentioned a trimming charge of .35 of a cent per bushel which is charged in Chicago on ex barge grain.

[fol. 1148] A. Yes.

Q. Will you explain what that trimming charge is?

A. Well, as I understand it, a trimming charge is the cost of unloading the barge. The cost of unloading box cars is never assessed to the shipper. The purchaser of the grain pays the cost. On unloading barges, due to the rules of the Board of Trade, the shipper must pay the unloading cost.

Q. When was that rule made, that the shipper must pay the trimming charge or unloading cost of barges?

A. I do not know.

Q. Recently, or not?

Mr. Enoch: He says he does not know.

By Mr. Root:

Q. Mr. Robbins, do you hold any position in the Allied Barge Corporation?

A. Yes, sir.

Q. What is that position?

A. I am president of the corporation.

Mr. Root: I believe that is all I have on direct, your Honor.

Exam. Taylor: Are there any other questions by protestants?

Mr. Macaulay: I have one question.

By Mr. Macaulay:

Q. Mr. Robbins, does your organization pay a commission on grain sold in Chicago?

A. Yes, sir.

Q. What is the rate of that commission?

[fol. 1149] A. One-half cent per bushel.

Q. Do you ever sell direct to a buyer of grain in Chicago?

A. Yes, sir.

Q. Do you pay a commission just the same?

A. Yes, sir.

Mr. Macaulay: That is all.

Exam. Taylor: You may cross examine, Mr. Enoch:

Cross-examination.

By Mr. Enoch:

Q. Mr. Robbins, I did not hear who was the party under consideration when your counsel asked you if that party or those parties had ever loaned you any money or had any direct or indirect financial interest in the organization which you represent. Was that the Continental Grain Company?

A. No. He asked me if Lowell Hoit & Company——

Q. Lowell Hoit & Company?

A. Yes.

Mr. Root: That was in answer to Mr. Brown's statement, I might say to you.

By Mr. Enoch:

Q. You are president of the Allied Barge Corporation?

A. Yes.

Q. Can you tell me the stockholders of that corporation?

A. Yes, sir.

Q. Please give them to me.

A. The Cooperative Allied Grain Dealers Corporation [fol. 1150] are one of the stockholders.

Q. How much stock do they own?

A. The Allied Grain Corporation——

Mr. Root: I submit, your Honor, it is not material, the percentage. We have no objection to telling who owns the

stock. I do not think it is material to go into the matter of dollars and cents.

Mr. Enoch: I think it might prove to be material.

Exam. Taylor: The witness may answer.

A. The Cooperative Allied Grain Corporation owns $3,500 worth of stock.

By Mr. Enoch:

Q. Who are the other stockholders?

A. Square Deal—Farmers Square Deal Grain Company of Morris owns $3,500 worth of stock.

Q. Yes.

A. W. H. Allen of Morris owns $4,000 worth of stock. Mrs. W. H. Allen owns $3,000 worth of stock. That is all the stock issued.

Exam. Taylor: Just a minute.

By Exam. Taylor:

Q. Give me the name of the Farmers Cooperative again.

A. Farmers Square Deal Grain Company of Morris, Illinois.

By Mr. Root:

Q. Is there treasury stock besides that that has now been retired and is owned by the corporation itself?

A. Not the barge corporation, no, sir.

Mr. Enoch: We did not get that question.

[fol. 1151] Exam. Taylor: Louder, please, Mr. Root.

Mr. Root: I just asked him if there had been—if there was any treasury stock, so-called treasury stock of the corporation which is its own stock, retired out of surplus, and the witness answered "No", as I understood him.

Exam Taylor: Proceed.

By Mr. Enoch:

Q. What are the assets of the Allied Barge Corporation?

Mr. Root: May I inquire what you mean by that? Do you mean physical assets, dollars and cents, or what?

Mr. Enoch: Let's start with the physical assets.

The Witness: They own four Dravo barges.

By Mr. Enoch:

Q. Have they any other operating equipment?
A. No, sir. That is their only physical asset.
Q. Do you have any barges under lease?
A. No, sir.
Q. Have you leased any of your barges to any other parties or corporations?
A. No, sir.
Q. Did the Allied Barge Corporation borrow any money from any grain shippers at any time during its existence, or from any government agency?

Mr. Root: May I have that question read?
Exam. Taylor: Read the question.

(Question read.)

[fol. 1152] A. No, sir, it did not.

By Mr. Enoch:

Q. In what business is the Allied Barge Corporation engaged?
A. It is in the business of——

Mr. Root: Do you want a copy of the charter?
The Witness: It is in the business of letting these barges out on contract.

By Mr. Enoch:

Q. Does it have any other business?
A. No, sir.
Q. You are incorporated to buy, sell and deal in all kinds of grain, seeds, fuel and so forth—you were so incorporated, were you not?
A. Yes, sir.

Mr. Root: Wait a minute. Who was incorporated, Allied Grain or Allied Barge?
Mr. Enoch: Allied Barge.
Mr. Root: Let us get it straight.
Mr. Enoch: Allied Barge Corporation.

By Mr. Enoch:

Q. Your answer to that was "Yes", was it, Mr. Robbins?
A. Yes.

Q. Up to date your only activity is the letting of these four barges you own out under contract?

A. That is right.

Q. Is that a written contract?

[fol. 1153] A. Yes, sir.

Q. To your knowledge has any grain ever been handled by any one of the Allied Barge Corporation's barges except the grain of the parent corporation—what is that?

Mr. Root: Allied Grain Corporation.

By Mr. Enoch (Continuing):

Q. —Allied Grain Dealers Corporation?

A. Yes. There has been some grain handled.

Q. By whom?

A. By Mr. Mechling, who does our towing. We sometimes trade barges with him.

Q. By and large, the grain that moves in these four barges that you let to Mr. Mechling under contract is the grain of Allied Cooperative Grain Dealers Association?

A. Yes, sir, almost entirely.

By Exam. Taylor:

Q. Do you lease them to anybody else but Mr. Mechling?

A. No, sir.

By Mr. Enoch:

Q. Is that a contract that provides that he may have these barges by the trip or by the week, or the year?

A. No.

Q. What is the nature of that contract?

A. With Mr. Mechling, you mean?

Q. Yes.

A. We have no written contract with Mr. Mechling in [fol. 1154] regard to letting him have barges. These barges were purchased for our own use and the only time he has had our barges was when it was more convenient for him to let us use one of his barges and we returned the favor later on by letting him use one of our barges.

Q. You want to keep your barges in use all the time?

A. We intend to, but that happened to be a case where we needed a barge, and he had an empty, but we did not.

Q. Do you not keep your barges in use?

A. Yes.

Q. All the time?

A. As much as we can, yes.

Q. What compensation does Mr. Mechling pay the Allied Barge Corporation for the use of these barges?

A. He does not pay any compensation.

Q. Well, is that because the use of those barges is taken into account when you agree with him on the price you will pay him for pushing these barges up the river or down the river?

A. No, sir. That is not taken into consideration. It is just simply a matter of a gentleman's agreement. We needed his barge, and in turn let him use one of our barges when he needed it, and we did not.

Q. I understand that your barges are in use most of the time?

A. They are, yes, sir.

Q. Most of the time they are filled with the grain of the [fol. 1155] Cooperative Allied Grain Dealers Association?

A. That is right.

Q. Now, you must contemplate the use of those barges at a profit to the Allied Barge Corporation?

A. Yes, sir.

Q. Now, is not, then, the use of these barges by Mechling in handling corn of the Allied, taken into account when you agree with Mr. Mechling on what you will pay him for towing the barges.

A. No, sir, it is not.

Q. What do you pay Mr. Mechling for towing your barges?

A. We pay Mr. Mechling one cent a bushel for towing our barges.

Q. Suppose you did not have any barges: how much would you have to pay?

A. We would have to rent his barges. We would have to rent barges from him.

Q. Mr. Mechling has barges?

A. Sure.

Q. What does he charge when he furnishes barges?

A. I do not know.

Q. It would be more than a cent a bushel, would it not?

A. Yes.

Q. Do you not think that the fact that you furnish the barge is taken into account when you get his services for a cent a bushel?

[fol. 1156] A. No, I do not think so.

Mr. Root: I could not hear that question. May we have it again?

Exam. Taylor: Read the question.

(Question read.)

The Witness: Let me modify that. We have a contract with Mr. Mechling to push our barges at one cent a bushel. You are asking whether we use his barges or not—is that what you mean?

Mr. Enoch: Perhaps I did not fully understand your arrangement. Maybe my question was confusing to you.

The Witness: Just to clarify that, I will say that the only time Mr. Mechling has used our barges is at a time when we did not need them.

By Exam. Taylor:

Q. You mean, Mr. Mechling has used your barges for what purpose?

A. For hauling grain.

Q. Whose grain?

A. Whosever he might need to haul.

By Mr. Enoch:

Q. You mean, other than the grain of Cooperative Allied Grain Dealers Corporation?

A. Yes.

Q. Is that correct?

A. Yes. The only time he has used our barges that way, he has returned barges in place of the barge used of ours. It was simply a trade-off.

[fol. 1157] Mr. Root: Mr. Enoch, may I ask one question?

Mr. Enoch: Yes.

Mr. Root: To get this straightened out.

By Mr. Root:

Q. Mr. Robbins, how often did you ever exchange barges with Mr. Mechling?

A. It is not often. Probably three or four times in the last year.

Q. In other words, it is a very unusual condition?

A. Very unusual.

Q. It would be one of his empty barges at your place, when your house is full of grain, and your barges are in Chicago or somewhere else, is that right?

A. That is right. That is the only time we use them.
Q. It is not usual or customary, that transaction?
A. No.

Mr. Enoch: I thought when you interrupted me you were going to ask the witness to make a statement. Now you are doing the testifying.

Mr. Root: We are wasting a lot of time over something that happens about three times a year. It does not go to prove anything.

Mr. Enoch: You brought it up, Mr. Root.

Mr. Root: We are perfectly willing to bring out the whole truth, but there is not any reason for taking a lot of time discussing an immaterial point.

[fol. 1158] Exam. Taylor: Proceed, Mr. Enoch.

By Mr. Enoch:

Q. Mr. Robbins, has the Allied Barge Corporation ever shipped any corn by water through any other medium than the arrangement you just described here?
A. No, sir.
Q. In your barges, as a rule, towed by Mr. Mechling?
A. Well, wait a minute.

Mr. Root: Now, wait just a minute. I object to that question.

The Witness: For 30 days they were towed by a different tower, by a different barge company.

By Mr. Enoch:

Q. When was that?
A. That was when we first started in business.
Q. How much was that per bushel?
A. That was the same price, one cent.
Q. How long did that last?
A. 30 days.
Q. Why did it change?
A. Well, our contract expired with the man we had.
Q. Did you have a monthly contract with them?
A. No. We were finishing up a contract with him.
Q. Over what period of time was that?
A. We had a year's contract with him.
Q. What towing company was that?
A. That was the Berry Barge Line.

[fol. 1159] Q. Are they operating on the Illinois River now?

A. I do not believe they are. They got a boat sunk down the river. I guess that is as near as they come, to operating. The only one they had is sunk. I suppose you would say not.

Q. When did you start using the Berry Barge Company?

A. November 1, 1938.

Q. You had a year's contract with them?

A. No, sir.

Q. I misunderstood you, then.

A. We had a contract with the Berry Barge Company to furnish us barges and do the towing, when we first started in the grain business. Then we bought these barges and in order to—we had to let him have 30 days' notice of expiration, so we simply cancelled his contract and gave him 30 days' towing on our barges.

Q. As I understand your contract with the Berry Barge Company, in your contract with the Berry Barge Company you leased barges from that company and then paid them so much per bushel for pushing the barges?

A. Well, he leased the barge and furnished the barge and the pusher, and we paid him so much a bushel.

Q. How much did you pay him for that?

A. 2 cents a bushel.

Q. How much?

A. 2 cents a bushel.

[fol. 1160] Q. Didn't you say you paid him a cent a bushel for towing?

A. Yes.

Q. So you paid him a cent a bushel for the use of the barge?

A. It was all in one contract.

Q. Then you thought it would be to your advantage to own your own barges and hire the towing of those barges?

A. Well, the fact of the matter is, he could not keep us supplied with barges. The barges he had were not economical barges to use. They were small and very hard to handle.

Q. Did you ever borrow money—or did Allied Barge Corporation have to borrow money?

A. No, sir.

Q. To buy these barges?

A. No, sir.

Q. Did you ever have to borrow any money from the Allied Grain Dealers Corporation?

A. No, sir.

Q. Are you in debt to that corporation now?

A. What do you mean? What are you talking about?

Q. The Allied Barge Corporation—is it in debt to the Allied Barge——

Mr. Day: Allied Grain.

By Mr. Enoch:

Q. —Continuing——Allied Grain Corporation?

A. No, it is not.

Q. Are these barges paid for?

[fol. 1161] A. Yes, sir.

Q. Are you an officer in the Allied Grain Corporation?

A. I am a manager. I am not an officer.

Q. Are you the active head?

A. Yes, sir.

Q. Who are the officers?

A. Mr. W. H. Allen is president. Mr. George E. Mellen is vice-president. Mr. R. A. McClelland is secretary. Mr. John Shumaker is treasurer.

Q. Who are the stockholders in Allied Grain Corporation?

A. I cannot tell you offhand. There are 23 of them.

Q. 23 of them?

A. Yes.

Q. You may have covered this on your direct, but that statement was read rather speedily.

A. I can tell you who they are, if you want to take the time.

Mr. Enoch: No. Tell me this:

By Mr. Enoch:

Q. Do you have any stock in Allied Grain Dealers Association—what is the name of that?

A. No, sir.

Mr. Day: Allied Grain Dealers Corporation.

Mr. Enoch: Allied Grain Dealers Corporation?

The Witness: No. I have no stock in it.

By Mr. Enoch:

Q. Are any of the officers of the Allied Barge Corporation stockholders in the Allied Grain Dealers Corporation?
[fol. 1162] A. Yes, sir.
Q. Who are they?
A. Mr. Allen.
Q. Any others?
A. No, sir.
Q. Are these 23 members that you heretofore mentioned all stockholders in the Allied Grain Dealers Corporation?
A. Yes, sir.
Q. They all have the same amount of stock?
A. No.
Q. Who are some of the larger stockholders?
A. Well, let's see. Mr. McClelland. Mr. Mellen. The Farmers' elevator at Dwight. Square Deal elevator at Morris. That is the Farmers' Square Deal elevator.
Q. How many shares of stock has the Farmers' Square Deal Corporation in the Allied Grain Dealers Corporation?
A. I think they have 70 shares.
Q. What is the total capitalization?
A. 50,000.
Q. Mr. Allen is an officer of the Farmers' Square Deal Grain Company?
A. No. He is not an officer.
Q. Who is president?
A. You had better ask him about that.
Q. All right.
[fol. 1163] A. Mr. Hunt is president.

By Exam. Taylor:

Q. Is Mr. Allen a stockholder in Square Deal?
A. I do not know.
Q. You do not know?
A. I do not know.

Mr. Root: He will testify, your Honor; they will have a witness whom they can ask all the questions they want.

By Mr. Enoch:

Q. In describing the operations in connection with transportation, you said the barge company, some barge company makes out a river straight bill of lading.

A. No. I do not believe I said that.

Q. I understood you to say that a river straight bill of lading is made out and signed.

A. That is right. I did say that, but I did not say the barge company made out the bill of lading.

Q. Who issues the bill of lading?

A. I make it out.

Q. What is that?

A. I make out the bill of lading.

Q. In what capacity?

A. As manager of the Cooperative Allied Grain Dealers.

Q. To whom do you issue that bill of lading?

A. It is the A. L. Mechling bill of lading.

Q. Now do you not mean that you fill out the bill of lading and turn it over for Mr. Mechling to sign, and really it [fol. 1164] is Mr. Mechling's bill of lading which he issues to you? Is that not about the way that works out?

A. It is just a question of whether it is or not. It is the same as a railroad bill of lading. If I sign one of those, I suppose it is still a railroad bill of lading.

Mr. Enoch: Mr. Root, are we going to have a copy of one of those?

Mr. Root: Yes. As a matter of fact, it is Mechling's bill of lading.

The Witness: Yes. It is his bill of lading.

Mr. Root: Mr. Robbins makes them out, as he says, and either the captain or pilot signs them on behalf of Mechling Barge Corporation.

By Exam. Taylor:

Q. With respect to that grain you are talking about under that bill of lading, that is transported in your own barge, pushed to Chicago or some other point by Mechling?

A. That is right—you say, our own barge. It is a barge owned by the Allied Barge Corporation.

Exam. Taylor: Yes.

By Mr. Enoch:

Q. Does the Cooperative Allied Grain Dealers Corporation own any elevators at Morris and Seneca?

A. No, sir.

Q. Do they have any under lease?

A. Yes, sir.

[fol. 1165] Q. What are the assets of the Cooperative Allied Grain Dealers Corporation?

A. The assets are all cash, except a piece of property we bought, where we expect to build an elevator.

Q. Where is that?

A. In Morris.

Q. What elevators are those that are under lease at Seneca and Morris?

A. The former Farmers National Elevator, now owned by the Farm Credit Administration is under lease to us.

By Exam. Taylor:

Q. When you say "to us", you mean, the Allied Grain Corporation?

A. That is right.

Exam. Taylor; Proceed.

The Witness: At Seneca there is an elevator built by the Continental Grain Corporation that is under lease to us.

By Mr. Enoch:

Q. What are the terms of that lease at Seneca?

Mr. Root: Your Honor, I object to this. It is not material, what all of the terms of the lease are. He said he has leased it and he is operating it. I think we are going pretty far afield here.

Mr. Enoch: That is eminently a proper question here.

Exam. Taylor: The witness may answer, if he knows.

The Witness: The lease is rather long. I cannot quote it.

By Mr. Enoch:

Q. Does it provide for a yearly rental?

[fol. 1166] A. Yes. We pay a half cent a bushel for the grain that goes through it.

Q. Half a cent a bushel?

A. Yes.

Q. Is there any other stipulation or provision in there in respect to compensation for the use of that elevator?

A. Compensation to whom?

Q. To the owner of the elevator.

A. No.

Q. For its use.

A. No.

Q. What is involved—what makes this contract so long, then?

A. It is quite a lengthy contract.

Q. When all you say that it provides for is a half cent a bushel.

A. It has a lot of "wherefores", "whyfores" and so forth. It is drawn up by lawyers. You know how they fix them up.

Q. You interest me. I would like to see it. Have you a copy of it?

A. No, I have not.

Exam. Taylor: Now, Mr. Enoch, are you talking about the contract between the Allied Grain Corporation and the owner of the elevator?

Mr. Enoch: Continental Grain Company.

Exam. Taylor: Continental Grain Company?

[fol. 1167] Mr. Enoch: Yes.

Mr. Root: I think it would straighten the record out, Mr. Enoch, if you call that a lease. It is not a contract. It is a lease.

Mr. Enoch: Have you a copy of that, Mr. Root?

Mr. Root: No, I have not.

Mr. Enoch: Would you be willing to let us see a copy of that?

Mr. Root: I do not see that there is any materiality in that.

Mr. Belnap: I would like to inquire what is the materiality. I happen to represent the Continental Grain Company. It does not seem to me that the arrangement under which that company leases an elevator to somebody to operate has anything to do with the lawfulness of the cancelling of the proportionals on ex barge grain into Chicago. It is absolutely irrelevant, as I view it.

Exam. Taylor: Are you making an objection?

Mr. Belnap: Yes.

Mr. Enoch: I think that really goes to an issue here, because here is the Continental Grain Company, one of these shippers, and the Commission in this case with these issues before it ought to know what this arrangement is down here in all of its aspects at Morris, Illinois, in connection with the operation of that elevator, to see whether or not [fol. 1168] these tariffs are being complied with.

Mr. Belnap: What tariffs?

Mr. Enoch: Any tariffs that have to do with——

Exam. Taylor: That tariff, as I understand it, is here in issue.

Mr. Belnap: Yes, but Mr. Examiner, the terms of a lease arrangement for a building through which grain is handled has nothing to do with a tariff, a railroad tariff for freight rates, unless I am sadly mistaken. I may misunderstand your view of it, Mr. Examiner, and Mr. Enoch's view. I do not understand how it can possibly be considered relevant.

Exam. Taylor: That is something in Mr. Enoch's mind that he is trying to bring out. I am going to overrule your objection. Mr. Enoch may proceed, if he sees fit, along this line.

Mr. Root: Mr. Examiner, may we request the Rock Island Railroad and all of these other railroads to bring in the contracts they have with all the grain dealers along their roads?

Exam. Taylor: If they are in issue, if there is any possibility of their being in issue, I will permit it, yes, sir.

Mr. Root: It is an admitted fact that most of the elevators in the country are leased from railroads.

Exam. Taylor: Proceed.

Mr. Enoch: Most of the operators would be glad to turn them over to the Allied Grain Dealers Corporation, too.

Exam. Taylor: Proceed.

[fol. 1169] Mr. Enoch: What about that? Will you furnish a copy of that contract for us, or that lease?

Mr. Root: If the Examiner so rules, that we must, yes.

Mr. Enoch: All right.

Exam. Taylor: Do you wish that, Mr. Enoch? Do you still wish that lease?

Mr. Enoch: Yes. I would like to see it.

Exam. Taylor: Can you furnish that tomorrow?

Mr. Root: I do not know. We will have to go down to Morris and probably find it in a safety deposit box and have copies made of it.

Exam. Taylor: If you cannot furnish it tomorrow, let us know and I will give you sufficient time in which to furnish it. Proceed.

Mr. Root: As a matter of fact, your Honor, what is down there is a contract of Allied Grain to purchase this house from Continental——

Exam. Taylor: Just a minute.
Mr. Root: Yes.
Exam. Taylor: Are you trying to testify?
Mr. Root: No, I am not. I thought I might explain it.
Exam. Taylor: If you want to talk about this we will go off the record.
Mr. Root: That is all right.
Exam. Taylor: Off the record.

[fol. 1170] (Discussion outside the record.)

Exam. Taylor: We will take a five-minute recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen. Proceed, Mr. Enoch.

By Mr. Enoch:

Q. What is the capacity of the four barges of the Allied Barge Corporation?
A. They hold 30,000 bushels each of corn.

By Exam. Taylor:

Q. And the weight per bushel is approximately 56 pounds?
A. 56 pounds is standard, yes.

By Mr. Enoch:

Q. Were those new barges when they were acquired?
A. No, sir.
Q. What did you pay for them?
A. We paid $8,500.
Q. $8,500 each?
A. Yes.
Q. Where did you get the money to buy those barges?
A. We have a stock company. We bought them under a bailment lease. You were talking about this lease. I want to say with regard to this lease—I said there was a lease with the Continental. It is about the same kind of lease that the bailment on these barges is. We are paying for the elevator, so much per bushel. It is a lease or it is not a lease, as you see fit. But, when the cost of the elevator is paid in at so much per bushel, it is our elevator, so it might [fol. 1171] be a purchase. We still do not owe for it, be-

cause any time we want to quit, we quit. There is no obligation, no notes signed, or anything of that kind.

Q. You have been talking about this lease, the contract for the elevator?

A. Yes.

Q. Speaking of the lease or contract with the Continental Grain Company?

A. Yes.

Q. I am talking about this arrangement——

A. That was the same kind of arrangement.

Q. —under which you purchased the barges.

A. Yes.

Q. Are these barges paid for, then?

A. Yes.

Q. Well, how much money did the Allied Barge Company get through stock subscription?

A. $14,000.

Q. $14,000?

A. Yes.

Q. Where did the balance——

A. The barges paid for themselves in use.

Q. In the operation?

A. Yes, sir.

Q. So that you—that is, the Allied Barge Company now [fol. 1172] has title to the four barges?

A. Yes, sir.

Q. No other individual or corporation or group of individuals has any interest whatever in the title to any one of the barges?

A. No, sir, no interest whatever.

Q. When did you begin to use those barges?

A. We started to use them on November 1, 1938—just a minute. I think we did not get them all—I mean, I think it was December 1st. I would not be positive as to whether it was November or December.

Mr. Root: Go ahead and finish your statement about how many barges you bought at that time.

The Witness: We just bought three to start with. Then later on we bought another one. We found we needed another barge.

Mr. Enoch: That is all I have now, until I see this contract. We are going to see it; I understand Mr. Root has undertaken to furnish it.

Mr. Root: Which contract is that that you are speaking about?

Mr. Enoch: I am talking about the contract we had under consideration just prior to the adjournment here, the contract with the Continental Grain Company.

Mr. Root: There has been no ruling by the Examiner on that yet, that I have heard—by the Examiner.

[fol. 1173] Exam. Taylor: I understood you to say that you would try to furnish it tomorrow, if you could; and if you could not, I said we would give you a certain length of time to do so.

Mr. Root: It is apparent that I did not make myself clear. I said we would furnish it if the Examiner ruled we must.

Exam. Taylor: Do you still maintain you want that lease or contract or whatever it is?

Mr. Enoch: I would like to see it. I think it may have a bearing on the issues here.

Exam. Taylor: In other words, do you want to just look at it here, or do you want to incorporate it as an exhibit in this record?

Mr. Enoch: I perhaps am not entitled to see it, unless it goes into the record, so unless they are willing to show it to me, I think I will have to say to you that I think it ought to be made part of this record.

Exam Taylor: Mr. Root, are you willing to let Mr. Enoch see it before he makes a request to have it incorporated in the record?

Mr. Root: Yes. As one lawyer to another, I am willing to let him read it. But I am not willing that the matter become part of the record in this case, unless the Examiner rules it should.

Exam. Taylor: I am not going to rule on it until Mr. Enoch makes a specific request to do so.

[fol. 1174] Mr. Enoch: I will make the request now, that I think it is material in connection with the issues here and that it ought to be part of this record.

Exam. Taylor: Well, if you cannot furnish it by tomorrow, I will rule on when it shall be furnished and if it shall be furnished. Is that all you have?

Mr. Enoch: Yes.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Mr. Robbins, what did you pay for those barges?
A. $8,500 each.
Q. Each?
A. Yes.
Q. How many barges do you usualiy ship in a tow?
A. Well, they are not generally all our barges in a tow. He might have two of our barges and he might only have one, but he could have five or six barges in the tow.
Q. I mean, for your own grain, you usually have one or two?
A. One or two, yes, sir.
Q. Is that correct?
A. Sometimes three. We have had as high as three.
Q. Do you ship this grain regularly?
A. Yes.
Q. On certain days of the week, for instance?
A. No, sir. Whenever we have a barge load and I think it is time to ship it, we ship it.
[fol. 1175] Q. There might be weeks when you might not have any?
A. There has not been any such period.
Q. There has not been a week go by but what you have made some shipment?
A. I do not recall any week but what we have made some shipment.
Q. Perhaps sometimes two shipments?
A. Yes. Sometimes every day.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Proceed.

By Mr. Day:

Q. In this period of approximately a year and a half you have had 6,250,000 bushels, as I understand it?
A. That is right.
Q. Now, when you make up the bills of lading, what information do you show on them?
A. We show the date; the point of origin; the company who it might be going to; and if it is sold through a commission company, the commission company who might have charge of it.

Q. You say, the point of origin.

A. Yes.

Q. Would that mean Morris, Dwight or some country station?

A. It might be Morris and it might be Seneca.

Q. It is some river point?

A. Yes.

Q. In any case?

[fol. 1176] A. Yes.

Q. What else?

A. Location of the elevator where it is to be unloaded.

Q. The kind of grain?

A. The kind of grain, whether it is bulk or sacked. It is always bulk with us. We also show on there the weight. I think that is all.

Q. Do you show this one and three-quarters cent freight on it?

A. No.

Q. There is no freight shown at all?

A. No, sir.

Q. That freight is only shown on your return to your customer?

A. It is not shown on the return to the customer.

Q. You just lump the two and one-quarter cents deduction, do you?

A. I make my bid after that deduction has been made.

Q. So there is nothing shown on the so-called bill of lading for freight?

A. No, sir.

Q. Is the charge made by Mechling always the same?

Mr. Root: Read the question.

Exam. Taylor: Read the question, please, Mr. Reporter.

(Question read.)

A. You mean, for towing our barges?

Mr. Day: Yes.

[fol. 1177] The Witness: Yes, sir.

By Mr. Day:

Q. Whether it is one or two or four barges?

A. Yes.

Q. You would pay the same amount per bushel?

A. Always the same.

Exam. Taylor: Your answer would seem to indicate that there was some other charge in connection with it, with Mr. Mechling's charges.

By Exam. Taylor:

Q. Is there any other charge?
A. No, sir.
Q. There is not?
A. No, sir.

By Mr. Day:

Q. Do any of the Allied Barge employees accompany the barges on the trips to Chicago?
A. None.
Q. The only employees on that trip are Mechling's, are they?
A. Yes, sir.
Q. How many men ordinarily does he have on a tow?
A. His crews are different sizes, depending on—he has four boats. They are different size boats. The larger boats I understand have a couple of more men than the others. Generally he has seven or nine on the boat.
Q. Seven on the smaller?
A. Yes.
Q. And nine on the larger?
[fol. 1178] A. Generally, yes.
Q. He has one large boat, you say?
A. Two.
Q. Two large boats?
A. I do not know that that is always the case, but that is generally the case.
Q. What length of time ordinarily is consumed in getting a barge, one of your barges, from Morris or Seneca to Chicago?
A. Well, they will run into Chicago in 20 to 24 hours.
Q. That is, to the elevator in Chicago?
A. Yes.
Q. Those elevators are usually located at the south end of town, in South Chicago?
A. South Chicago, yes, sir.
Q. How long do they lay over here in Chicago for unloading or other purposes?

A. Well, it depends on how soon they get on to the marine leg, but after they get to the elevator, it is from six to eight hours to unload them.

Q. Then what do they do?

A. Mr. Mechling picks them up and brings them back, or Mechling Barge Line.

Q. They start right back, do they?

A. Yes.

Q. So that the crew, or some of the crew is on duty 24 [fol. 1179] hours continuously, are they?

A. Yes, sir.

Q. On the return trip does it take about the same length of time as it does now?

A. It takes just a little less.

Q. How much less?

A. About 18 hours.

Q. 18 instead of from 20 to 24?

A. Yes, sir. That time varies, of course, because of weather conditions and so forth.

Q. How many barges ordinarily does Mechling have in tow?

A. Well, you say "ordinarily". That is a little hard to tell. He comes in with one, and he comes in with six, but it is hard to tell what you mean by "ordinarily".

Q. Anywhere from one to six?

A. That is right, yes.

Q. Is that correct?

A. Yes.

Q. He has hauled just one barge?

A. Yes, he has.

Q. Where he does haul one, he makes no different charge than where he would have six in the tow?

A. The same charge.

Q. Now, you told us about the breakdown of this two and a quarter cent deduction that you made in fixing the price [fol. 1180] to your customers.

A. Yes.

Q. You also said you made a deduction for handling and profit.

A. Yes.

Q. What does that amount to?

A. Well, conditions alter that sometimes, you know.

Q. Well, what would it amount to under ordinary conditions?

A. Under ordinary conditions we deduct 3½ cents from our bid. That leaves us a cent and a half for handling and profit.

Mr. [redacted]: Is that three—pardon me.

By Mr. Day:

Q. At other times it might be higher?
A. It might be a little more than that.
Q. How much?
A. Never more than 4 cents.
Q. 3½ to 4?
A. Yes.
Q. Is any charge made by Mechling to return the empty barges to your plant?
A. No, sir. It is included—that is included in the towing charge up.
Q. With respect to these discounts on account of grading, how much would that range to?
A. That is pretty hard to answer. They vary according to the market. Sometimes there is a surplus of off-grade corn on the market, and your discounts are wider when that [fol. 1181] happens than they are if there are only a few cars of off-grade corn.
Q. It might be 10 cents or more per bushel?
A. No.
Q. It would not be that much?
A. No. It might be a half cent; it might be a cent.
Q. These elements of weight, moisture, foreign material and color would only affect it at the most to the extent of a half a cent a bushel?
A. I did not say "at the most".
Q. That is what I am trying to find out. What would be the range?
A. The range—as I say, it is pretty hard to tell what the range might be. Market conditions control that a lot.
Q. It might be up to the 10 cents I stated a while ago, might it not?
A. That would be very unusual.
Q. It would be unusual?
A. Very unusual.
Q. But something over 5 cents would be rather usual, would it?
A. No. That would be very unusual, also.

Mr. Day: Off the record.
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Proceed.

By Mr. Day:

Q. You referred to the spasmodic competition of the [fol. 1182] truckers. Do you regard the approximately four million bushels a year that Bacon is said to ship into Chicago by truck as spasmodic truck competition?

A. It is spasmodic for this reason: you will find in the country that these truckers are in the country buying corn on an up market, or when there is a good demand for corn. If the market happens to be a little slack, they are not there at all. You can't find them.

Q. You say that is your competition?

A. I said that was the competition when we organized Allied.

Q. Is it the competition today?

A. To some extent; not a lot.

Q. The rail competition is no longer a factor, is it?

A. Oh, there is some grain shipped by rail, yes.

Q. There is some, but there is not very much of it, is there?

A. Not a lot. You have that occasionally. There is not a lot out of there.

Mr. Brown: You are talking pretty softly.

Mr. Day: He says there is not a lot of it. I think that is all I have.

Mr. Enoch: May I ask one more question, Mr. Examiner?

Exam. Taylor: Yes.

By Mr. Enoch:

Q. When you make this contract on behalf of Allied Barge Corporation with Mr. Mechling, what is the name of the party with whom you make it?

[fol. 1183] A. Well, I may be mistaken here, but I am sure—fairly sure it is signed "A. L. Mechling Barge Line" by "A. L. Mechling".

Q. A. L. Mechling Barge Line is simply a trade name, is it not, for A. L. Mechling?

A. I do not know whether he is a corporation or not. I might say here that I said no one else hauled for us. Mr. Mechling did furnish us barges at different occasions when we were under contract with Mr. Barry. We were not able to get barges and we got other persons to haul for us and he furnished barges and hauled them.

At that time he was not under contract with us to push them. You could not get barges—sometimes we could get some from him, and sometimes from John I. Hay and other fellows like that. There was a fellow by the name of Robinson who furnished us some, two or three times.

Q. John I. Hay—did he ever tow any barges for you?

A. No, sir, only his own barges. I do not know; I suppose they were his. He furnished the barges, at least.

Mr. Root: Speak louder, please.

The Witness: Mr. Hay—the only times he towed barges for us were the times when we were on the spot and could not get barges. At that time he furnished his own barges and towed them. We had nothing to do with getting barges.

By Exam. Taylor:

Q. What did he charge for barges?

A. He charged at that time 2 cents a bushel.

[fol. 1184] By Mr. Enoch:

Q. That was the contract rate, was it not?

A. Well, I rather think it was. We never had any written contract with him.

Q. Did you ever do business with Lawrence Transportation Company?

A. No.

Q. Or Mr. Lawrence?

A. No.

Q. Meyers?

A. No, sir.

Q. Waterwide?

A. No, sir.

Q. Central Barge Company?

A. No, sir.

Q. I understood you to say that all of the prices you receive—when I say "you", I mean the Allied Dealers Corporation—are F. O. B. Chicago?

A. Yes.

Q. In the elevator?
A. Yes.

Mr. Enoch: That is all.
Exam. Taylor: Mr. Flansburg?
Mr. Flansburg: No cross examination.
Exam. Taylor: Do any other respondents have any cross examination? (No response.) Mr. Brown?
[fol. 1185] Mr. Brown: I have a few questions, Mr. Examiner.
Exam. Taylor: Proceed.

By Mr. Brown:

Q. Mr. Robbins, when you put out bids to your stockholders, who are your country elevator operators, do you know what amount of that bid they retain for their own service of having the grain delivered by the farmers to your elevator at Morris and Seneca?
A. I do not believe I quite get you, Mr. Brown.
Q. You put out a certain bid to your stockholders periodically, do you not?
A. Every day.
Q. Every day?
A. Yes.
Q. That bid is the same to all of them, is it?
A. Yes.
Q. That bid requires them to deliver grain to your elevator at Morris or Seneca?
A. That is right, yes.
Q. Is that correct?
A. Yes.
Q. The question was: do you know what amount of that bid they retain for their services, the country elevator?
A. I think that varies. I do not know what amount they retain.
Q. Do you think it varies because of distance, or for some other reason?
[fol. 1186] A. Competition.
Q. Competition?
A. Yes.
Q. Do you think distance has anything to do with it?
A. You mean, the hauling charge?
Q. Yes.
A. The hauling charge is, probably.

Q. If that is based on the length of haul from the farmer's place?

A. Yes.

Q. Now, you gave as total charges, I understand, that your company pays to the Mechling Company for towing and for other expenses from Morris and Seneca to Chicago, one and three quarters cents per bushel, I think you said, for freight; .35 of a cent perbushel for trimming; and .15 of a cent per bushel for weighing?

Exam. Taylor: Weighing inspection.

Mr. Brown: Yes.

By Mr. Brown:

Q. Do you ship any grain by rail?

A. I have shipped a few cars—just a minute. You said that the charge was made by Mr. Mechling. It is not.

Q. No. I said, the charges you pay——

A. Yes.

Q. —including what you pay to Mechling.

A. I understood you to say those were his charges.

[fol. 1187] Q. No.

A. No.

Q. The total charges figure up 2¼ cents a bushel?

A. Yes.

By Exam. Taylor:

Q. Those charges, those total charges are charged against the owner of the grain, are they not?

A. No, sir.

Mr. Day: He said he deducts it in making his price to the customer for those purposes.

By Exam. Taylor:

Q. Is that correct?

A. That is correct, yes.

Exam. Taylor: Well, that is a charge against the owner of the grain, or the originator of the grain.

Mr. Root: Allied has title to this grain, has it not?

The Witness: No—I beg your pardon, sir. Allied takes and makes the price on the grain——

Exam. Taylor: Allied Grain Corporation?

The Witness: Allied Grain Corporation makes the price on the grain delivered at Morris. Then, up to that time there is no charge on it. That is the price the man who sells it to me gets for the grain if it grades what he sold it at. There is no deduction from that.

Mr. Brown: My idea is to break down the total of 2¼ cents per bushel that his company has to pay out in some way or another, to get grain towed and the barges furnished, [fol. 1188] from his elevator to the destination.

Exam. Taylor: Proceed.

By Mr. Brown:

Q. When you ship by car, do you pay something in Chicago for weighing and inspection?

A. Yes.

Q. Would that about offset what you pay for weighing and inspection of barge grain?

A. It is approximately the same.

Q. About the same?

A. Yes.

Q. This .35 of a cent for trimming, that is for trimming the barge load up to the elevator leg at South Chicago, shoveling up to the leg?

A. I understand it is, yes.

Q. That brings us down to the 1¾ cents per bushel.

Exam. Taylor: Just a minute, Mr. Brown.

Mr. Brown: Yes.

Exam. Taylor: In order that it may be clear on the record, the leg you speak of is the section from the elevator down into the barge, is it not?

Mr. Brown: Yes.

Exam. Taylor: I just wanted it clear on the record.

Mr. Brown: It is the trimming up to the unloading leg of the elevator at South Chicago.

Exam. Taylor: Proceed.

[fol. 1189] By Mr. Brown:

Q. I understood you to say you paid Mechling for the mere towing charge, that is, for pushing the barges up, one cent per bushel?

A. That is right.

Q. That leaves three-quarters of a cent per bushel unaccounted for. What does that cover?

A. That goes to the barge company, Allied Barge.

Q. That goes to Allied Barge Company?

A. Yes.

Q. For the use of the barges?

A. That is right, yes.

Q. Then, when Mechling or somebody else supplies the barges, do you pay three-quarters of a cent per bushel for the use of the barge?

A. The charge is all in one. As I say, since we had this contract, Mr. Mechling has never had—we have never made any deal that way. The only time he hauled for us was before we got barges of our own, and at that time I think we paid two cents.

Q. That is, two cents exclusive of trimming and weighing?

A. Yes. That is just the freight, in other words, because he furnished his own barges.

Q. In other words, formerly what was 2 cents is now three quarters of a cent, but he does the towing with your barges?

A. That is right.

[fol. 1190] Q. Is it fair to state that three-quarters of a cent per bushel is for the use of your barges?

A. That is right.

Q. When these barges are detained any undue length of time, is there any detention charge?

A. We have never been able to collect any yet.

Q. Have you had detention?

A. Yes.

Q. That was borne by your barge company, if it was your barges?

A. Yes, sir.

Q. Now, did you ever use the Federal Barge Line at any time while you have operated the Morris elevator?

A. No. We never used the Federal Barge Line.

Q. Why?

A. They were too expensive.

Q. Do you mean, they charged too much?

A. They charged too much.

Q. Much higher than you are now paying?

A. I think their rate is 6 cents.

Q. From Morris to Chicago?

Exam. Taylor: That is the published rate?

The Witness: I think it is.

Mr. Day: Whose charge is that?

The Witness: Federal Barge Line's.

Mr. Brown: I may for the record state that 6½ cents per [fol. 1191] hundred pounds is the rate in the tariff.

Mr. Belnap: That is not a published rate, Mr. Examiner.

Exam. Taylor: Sir?

Mr. Belnap: That is not a published rate with the Commission. You used the words "published rate," in the sense of filing with the Commission, did you not?

Exam. Taylor: I want to know.

Mr. Belnap: I want to clear the record up.

Exam. Taylor: Clear it up. Here is your opportunity.

Mr. Belnap: There is no rate published from Morris, Illinois, to Chicago, with the Commission. It is put in a printed document, and that is published. I think that is the way you intended to ask the question, was it not?

Exam. Taylor: Is it published with the Illinois Commission?

Mr. Oliphant: Yes, Mr. Examiner.

Mr. Enoch: I would like to have that clear. What rate is published with the Illinois Commission?

Mr. Oliphant: The rate between Morris and Chicago.

Mr. Day: 6½ cents.

Mr. Oliphant: I do not recall whether that is the rate. Mr. Brown says that is in the tariff.

Mr. Brown: I checked the latest tariff. It is 6½.

Mr. Oliphant: Illinois Commerce Commission No. 45.

Exam. Taylor: Very well. You may proceed, Mr. Brown.

By Mr. Brown:

Q. Mr. Robbins, when you write out the billing instruc- [fol. 1192] tions in this bill of lading for the signature of Mr. Mechling's representative, what do you show on the bill of lading as the destination of these barges?

A. It depends on what elevator they are going to. If they are going to Morris, you see, Morris has two or three elevators. They show which elevator it is going to in South Chicago. If it was going to the Continental, it goes to the Rock Island elevator, South Chicago.

Q. That destination is always shown when Mechling hooks on to your barges?

A. Yes.

Q. And starts towing?

A. Yes.

Q. Now, you mentioned something about a half cent per bushel on consignment. Did you mean that on barge shipments?

A. May I have that question again?

Q. You said something about a half-cent per bushel commission on consignment.

A. No, I did not.

Q. You did not?

A. No.

Q. Well, I have it here, one-half cent per bushel at Chicago when on consignment.

A. I did not say anything about consignment.

Q. Do you consign any grain?

[fol. 1193] A. No, sir.

Q. Are the destinations of your shipments from the Morris elevator different from the destinations of the shipments from your Seneca elevator?

A. Some of them.

Q. Are they materially different?

A. No. I would not say they were materially different. What do you mean?

Q. I mean this: do most of the shipments from the Morris elevator go to certain destinations in South Chicago, certain designated places for unloading?

A. Wherever I might designate.

Q. Yes.

A. Yes.

Q. That is usually not the same designation for delivery as the shipments from Seneca?

A. They are about the same, yes.

Q. They are?

A. Yes.

Q. Intermingled?

A. Yes.

Q. Someone asked about Lowell Hoit & Company. You would not know, would you, in your official capacity, whether Lowell Hoit & Company had any financial relations with any of the stockholders of the Allied Grain Corporation?

[fol. 1194] A. I would not, no.

Q. Could you give the locations of the elevators of your constituent membership?

A. Yes, sir.

Q. Will you furnish that for the record?

A. I have furnished it.

Q. Oh.

A. It is in the map. It shows the locations.

Mr. Root: Exhibit 44. That shows both,—off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

Mr. Root: Take exhibit No. 44, Mr. Robbins, and give that information.

The Witness: Referring to exhibit No. 44, Morris is the first one. That is the Farmers' Square Deal of Morris. Mazon is the next member: Mazon Farmers Elevator. Verona is the next member: that is the Verona Farmers' Elevator. Dwight is the next member: that is the Dwight Farmers' Elevator and R. A. McClelland.

Mr. Root: You have two members in Dwight?

The Witness: Two members in Dwight.

Mr. Root: Go ahead.

The Witness: Reddick is the next member: that is the Reddick Farmers' Elevator. Emington is the next mem-[fol. 1195] ber: that is the Robinson Grain Company. Saunemin is the next member: Saunemin is the Saunemin Elevator Company. Coal City is the next member: that is John Bookwalter. Kinsman has a member. That is Dunn Brothers. Langham has a member. That is M. T. Welch. Lisbon Center has a member—the name is quite long. I think it is Farmers' Cooperative Grain, Lumber & Supply Company. I believe that is what it is,—of Lisbon Center.

Wilmington has a member. That is Mr. Luther, C. J. Luther, I believe his name is. Minooka has a member. That is the Minooka Grain Company—Minooka Grain & Supply Company, I believe it is. Newark has a member. That is the Newark Farmers' Elevator. Serena has a member. That is the Serena Farmers' Eelevator. Gardner: Charley Treasure.

Mr. Root: The first one there shows two.

The Witness: The Farmers' Elevator of Dwight have an elevator at Gardner also.

Mr. Root: Are they both members?

The Witness: Yes. I mentioned that before.

Mr. Root: There is one member that is not on here, the Yorkville Farmers' Elevator—there are two members that are not on here: Yorkville Farmers' Elevator and the Plainfield Elevator Company which are located at Yorkville and Plainfield, Illinois, respectively.

By Mr. Root:

Q. Is that correct?

A. Yes. Those are two different companies, and two [fol. 1196] different stations.

Mr. Root: All right.

The Witness: I think that is all, Mr. Brown.

By Mr. Brown:

Q. The balance shown there are not members?

A. I do not believe I missed anyone.

Q. How about Wing?

A. Wing is not a member.

Q. What?

A. Wing is not a member.

Q. What would you say is the greatest distant haul of grain furnished by these stockholders?

Mr. Root: May I have the question read? I did not hear it.

By Mr. Brown:

Q. What is the greatest distant haul of grain from any of these stockholders?

A. I think Saunemin is the furthest removed. That is 38 miles, I believe, to Saunemin. I am not positive, but it is right close to it.

Q. Do you also receive grain from non-members that is trucked as great a distance as 38 to 40 miles?

A. Yes.

Q. To your elevator?

A. Yes, sir.

Q. Do you designate the elevator to which it is to be delivered when you put out your bid?

[fol. 1197] A. No.

Q. It can be delivered to either Seneca or Morris?

A. Either elevator.

Q. At the option of the shipper?

A. Yes.

Q. Were you connected with the Morris elevator at the time it was operated by the Farmers National Grain Corporation?

A. No, sir.

Q. When you first began operating the elevator at Morris, was there any understanding of any sort as to the distance beyond which you would not bid, a distance from your elevator, say, of 15 miles?

A. No, sir.

Q. Never?

A. No.

Q. Did you ever hear of any such understanding?

A. No, sir.

Q. Was the elevator at Peytonville operated by Finnegan in operation before you people got ahold of the Morris elevator?

A. Yes.

Q. When did you take ahold of the Seneca elevator?

A. I think we started first in October of last year, 1939.

Q. You were the first operators of that elevator?

A. Yes, sir.

Q. Did I understand you to say that all of the grain that [fol. 1198] you ship from both Morris and Seneca to South Chicago is delivered sold F. O. B. destination?

A. Yes, sir.

Mr. Root: What was that question?

Mr. Brown: I asked if all of the grain shipped from Morris and Seneca to South Chicago is delivered sold F. O. B. destination.

The Witness: C. I. F.

By Mr. Brown:

Q. What connection do you have with the grain after it is delivered and you get your money for it?

A. I did not hear you.

Q. What connection do you have with the grain after it is delivered at destination, at South Chicago, and you receive your pay for it?

A. We do not have anything to do with it.
Q. No connection whatever after that?
A. No, sir.

Exam. Taylor: Are you talking about the barge line, now, or your grain company?
The Witness: The grain company, wasn't it?
Mr. Brown: Yes. The grain company.
The Witness: Yes.

By Mr. Brown:

Q. Are your stockholders prohibited from shipping by rail or by truck to Chicago?
A. No, sir.

[fol. 1199] Q. If they sell to a river elevator, are they obligated to sell to you?
A. No, sir.

Q. Is your bid the same to non-stockholders as to stockholders?
A. Yes, sir.

Q. This three-quarters of a cent per bushel difference between the towing and what I understand is the transportation cost—is that paid by the Allied Grain Dealers Corporation direct to the barge company after each transaction is finished?
A. No.

Q. How do you account for it?
A. It is taken out at Chicago, the same as your freight is taken out when your grain is unloaded and weighed. The towing and the barge charges both are taken out there.
Q. You mean, the charges are collected at Chicago?
A. Yes.

Q. On the out-turned weight?
A. Yes.

Mr. Enoch: I did not get what charge you are talking about.
Mr. Brown: The difference between the towing charge of 1 cent and the 1¾ cents that covers what I would call transportation.
The Witness: I understood you to say both the towing and the three-quarters of a cent charge.

[fol. 1200] By Mr. Brown:

Q. Let's take the one and three-quarters cents.
A. Yes.
Q. That is paid in one lump sum?
A. Yes.
Q. By the Chicago unloader, based on the out-turned weight?
A. Yes.
Q. He pays that to whom?
A. Allied Barge Company.
Q. Allied Barge Company?
A. Yes.
Q. Allied Barge Company retains three-quarters of a cent for its service, and one cent per bushel goes to Mechling?
A. That is right, except for the charge for trimming and weighing and inspection.
Q. Oh, yes.
A. That is not included in that.
Q. That is not included in the 1¾ cents.
A. No.

Mr. Brown: I am trying to break down the 1¾ cents.

By Mr. Brown:

Q. This three-quarters of a cent per bushel for use of the barge company's barges does not go through the hands of Allied Grain Dealers Corporation?
A. No, sir.
Q. It is paid direct?
A. Yes.
[fol. 1201] Q. I think you said you did not employ any barges other than your own, except when you made an interchange with Mr. Mechling, during periods when you did not have barges there, and so forth, is that correct?
A. That has been the case since we had our own barges. Prior to that we got barges wherever we could. We were in a terrible spot and we had to get them.
Q. Your business was so great you could not furnish them yourself and Mechling could not furnish them, so you went outside to get them?
A. We had a contract with the Barry Barge Line to furnish barges and do the towing. They could not furnish us

enough barges. They were too slow. The barges were very small. At that time we got barges wherever we could get them. Ordinarily—in fact, all the time, the barge included the towing. The man who owned the barge did not let us have it unless he towed the barge, too.

Q. How long has it been since the Barry Line went out of business?

A. I would not say they are out of business. Their boat sunk here about 20 days ago. I suppose they are out of business. I do not know.

Q. I would think they would be.

A. Yes.

Q. I thought it was some months ago.

[fol. 1202] A. No. 20 days ago.

Q. Let us go back to the period prior to 20 days ago when you had to hire outside barges that could not be furnished either by yourself or Mechling.

A. Yes.

Q. From whom did you obtain them?

A. Wherever we could get them.

Q. What did you pay for the use of them?

A. We had no written contract with anyone, you understand. It was a verbal agreement between whoever might be able to furnish barges, and invariably he insisted on pushing those barges when he furnished them. Those barges at that time were 2 cents a bushel.

Q. Then it so happened that there have been times in the recent past when there was towing done for your account by other than Mechling?

A. Yes.

Q. You paid for that, 2 cents a bushel?

A. The same thing before Mechling started, yes.

Q. You paid 2 cents a bushel since Mechling started, is what I want to get at.

A. No. We have not had anyone tow for us except Mechling, since he started.

Q. Since Mechling started towing for you, during any period when there was need for a barge, when he could not [fol. 1203] furnish barges and you yourself could not furnish them, did you get barges?

A. No, sir.

By Exam. Taylor:

Q. Have you railroad facilities at your elevator?

A. We have railroad facilities at Morris, but not at Seneca.

Q. When you could not get barges at Morris and you had railroad facilities, did you ship by rail?

A. We shipped 34 or 35 cars by rail there in August, 1938, during the rush time of corn.

Mr. Brown: Just one more question.

By Mr. Brown:

Q. I believe you compared the price that the farmers receive who deliver grain to your elevators at Morris and Seneca with what they would have received had the shipments gone by rail. Will not that vary a great deal?

A. Yes.

Q. According to the distance the farmer has to haul it to your elevator?

A. It varies some, yes.

Q. How much would you say, between 10 and 20 miles?

A. You mean, the hauling charge between 10 and 20 miles?

Q. The net return to the farmer.

A. It does not vary much in that distance.

Q. It does not vary much between 10 and 20?

A. No.

Q. Between 10 and 30, how much does it vary?

[fol. 1204] A. It varies some; not a lot, for this reason: the railroad rates at a point 30 miles distant are higher than they are at Morris.

Q. I see. 40 miles?

A. That more or less offsets the difference in the hauling.

Q. 40 miles away from the elevator the rail rate would still be a little high?

A. Yes.

Q. The gradation of the rail rates really shuts the fellow off from shipping by rail and throws him over to the barge on a common rate?

A. A farmer gets about the same whether he is 40 miles away, or whether he is not. Of course, there is a little as to where it is uneconomical to haul.

Mr. Brown: Mr. Robbins, I believe that is all. Thank you.

By Exam. Taylor:

Q. What is the greatest distance they would haul to the Seneca or Morris elevator?

A. I think about 45 miles is as far as we get grain.

Q. From Saunemin?

A. Saunemin is 44 miles, yes—no. Saunemin is 38 miles. Wing is 44 miles. We get quite a lot of grain from them.

Exam. Tayor: Is there any other cross-examination by counsel in support of the respondents? (No response.)

Mr. Day: I want to ask one more question, Mr. Examiner.

Exam. Taylor: Now, does this cross-examination bring up [fol. 1205] something new?

Mr. Day: No. This is supplemental to what Mr. Brown brought out.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Mr. Robbins, with respect to this detention, you stated that you made no charge for detention?

A. Detention?

Q. To the owner. Does Mechling make a charge?

A. Detention?

Q. Yes.

A. I do not get it. What do you mean?

Q. The same detention you answered Mr. Brown about.

A. You mean, the charge?

Q. I am talking about the detention of the barge. You said there was such a thing. You answered Mr. Brown to the effect that you made no charge to your customer yourself for detention.

A. Well, I may be pretty dumb. I want to know what you mean by "detention". Do you mean the holding of the barge at the unloading point of something of that kind?

Mr. Day: Off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

Mr. Day: He asked you if barges were sometimes detained and you said "Yes", that they were.

[fol. 1206] The Witness: Yes.

Mr. Day: Then Mr. Brown asked you "Do you make a charge to your customer where barges are detained", and you answered "No".

The Witness: Yes.

By Mr. Day:

Q. Having recalled that to your mind, will you state now whether the Mechling Barge outfit makes a charge against the grain where their barges are detained?

A. I do not know. You mean, where he uses his own barges?

Q. Yes.

A. I do not know whether he does or not. I would not be able to say.

Q. Well, are there occasions where his towing is detained on account of congestion at the elevator or obstructions to navigation or for some other reason?

A. Sometimes, yes, sir.

Q. In a case where the elevator is congested and he cannot set the barges in to unload the grain, would he make a charge?

A. No.

Q. Against the property at that time?

A. No, sir, no charge.

Q. He will stay there as long as is necessary?

A. Reasonably long. I do not think he would stay unreasonably long.

Q. The point is, he never has made a charge?

A. He never has made a charge, no, sir.

[fol. 1207] Q. How often do you make these settlements with Mechling?

A. Mechling gets paid after the unloading of every barge.

Q. By you?

A. No, sir. By the Allied Barge Company.

Q. I mean, by your company—by Allied Barge Company?

A. Yes, sir

Q. He is paid here in Chicago by the Allied Barge Company?

A. No, sir. His address is Joliet. We mail him a check in Joliet.

Q. You mail it from Morris or Seneca to Joliet after you hear that the barge has been unloaded here in Chicago?

A. The check is mailed from Morris to Joliet. The office of the barge corporation is in Morris and the check is mailed from the office of the Barge Corporation to Mr. Mechling at Joliet.

Q. How long after the barge is unloaded?

A. Just as soon as we get the returns on it.

Q. That necessitates your paying bills to Mechling, then, once a week or oftener?

A. Oh, yes.

Q. Depending on how many barge loads you send up here?

A. Yes.

Q. You do not let it run to monthly settlements?

A. No, sir.

Q. There is a settlement made after each load?

A. After each load—I will modify that. Sometimes [fol. 1208] we get returns on two or three barges at a time. In that case there would be two or three loads in one check.

Q. They are all in one tow?

A. All in one tow, yes.

Q. After each tow you make a settlement?

A. That is right.

Q. The return is an account sales that is sent to you from Chicago?

A. The return is sort of a freight bill, yes, sir.

Q. Who issues it?

A. You mean, for Mr. Mechling?

Q. No.

A. What do you mean?

Q. You said you pay Mr. Mechling after the grain is unloaded in Chicago.

A. Yes.

Q. After you get your returns from that grain. We want to know what you mean by "return".

A. I do not mean for the grain. I meant returns from the unloading of the barge which gives us the weight of the amount of grain that was in the barge. There is a freight bill issued.

Q. Who issues that?

A. Either the commission company or the elevator who unloads the barge, giving us the amount of grain.

Q. Do you have a copy of one of those returns with you?

[fol. 1209] A. No, I have not.

Mr. Day: I wonder if you would mind furnishing that for the record.

Mr. Belnap: I think one is in the record.

Mr. Root: Not of this particular kind.

Mr. Belnap: Yes.

Mr. Root: Wait a minute. At the previous hearing didn't we get those?

Exam. Taylor: They are here.

Mr. Root: We were talking about manifestos and one thing and another.

Mr. Day: I do not think it is in the record.

The Witness: I also think one of those bills of lading of Mr. Mechling is probably in the record.

Mr. Belnap: Exhibit No. 32, I think is a copy of the document you are talking about.

The Witness: This looks like one here (indicating). That looks like one.

Exam. Taylor: Just a minute.

The Witness: It is not to us.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Will you state that on the record, please, Mr. Witness.

The Witness: That is not one of our——

[fol. 1210] Exam. Taylor: You are referring to exhibit No. 24?

Mr. Day: That is not one what?

The Witness: That is similar to the one we get. It is not one of ours, however.

Exam. Taylor: Exhibit No. 24 is——

The Witness: This happens to be Continental.

Mr. Root: Which exhibit do you have?

The Witness: 24.

Mr. Root: Look at 32. 32 is one of yours.

The Witness: Yes. That is one of ours.

By Mr. Day:

Q. Is that what you meant when you referred to a return?

A. Yes. That is what the barge company gets.

Q. It is on receipt of that so-called return typified by exhibit No. 32 that you make your payments to the barge company?

A. That is right. I do not make payments.

Q. Your company does?

A. Yes.

Q. Do not quibble. Your company does, or your barge company does.

A. Yes. That is right. That is one of the bills.

By Exam. Taylor:

Q. What is the purpose of the bill?

A. Well, that is simply a freight bill. This has a cent and three-quarter per bushel on corn, you notice, and a different price on oats.

[fol. 1211] Q. What is the price on oats?

A. 1.4 cents. Then the barge company, of course, deducts their three-quarters of a cent, or whatever it might be——

Mr. Belnap: Louder, please.

The Witness: —and they send Mr. Mechling a check for his one cent.

Mr. Belnap: May we have the reporter read that? I could not hear it.

Exam. Taylor: Read the answer, please.

(The record was read.)

By Mr. Day:

Q. This particular return, as you call it, showed in addition to a charge of 1¾ cents on beans, a charge of 1.4 cents on oats.

A. That is right.

Q. Is that the charge on oats?

A. That is right.

Q. What was the contemporaneous charge on corn?

A. The same as beans. There was no corn on the bill. That would be the price.

Mr. Day: I think that is all.
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: We will adjourn until 2 o'clock P. M.

(At 12:30 P. M., adjourned until 2 o'clock P. M.)

[fol. 1212] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Taylor: All right. Come to order, gentlemen.

O. B. Robbins resumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Enoch:

Q. Mr. Robbins, prior to the noon recess you were talking about exhibit number 32 which purports to be the document surrendered to the eastbound carriers for the purpose of engaging the application of the outbound proportional rates from Chicago. Now, directing your attention merely to the physical making up of this document exhibit number 32, do you know where the typewriters are or the lead pencils that were used to make the notations on this document, the original of it?

A. I think it was in Mr. Lowell Hoyt's office. The document was made by an agent there of the Allied Barge Company.

Q. What agent was that?

A. Mr. Allen has an agent there to look after his freight business, in Mr. Hoyt's office.

Q. In Mr. Hoyt's office?

A. Yes.

Q. Is that the office of the Lowell Hoyt Company?

A. That is right.

[fol. 1213] Q. Now, at the bottom there is a notation "Paid 11/30/39, per W. H. Allen." Is that the W. H. Allen that is president of the Allied Grain Dealers Corporation?

A. Yes, sir.

Q. And was Mr. Allen's signature on the original, do you know?

A. I don't know. I imagine it was but I don't know.

Q. Well, now, would he put his signature on at Chicago or at Morris?

A. At Morris probably.

Q. Now, when you spoke of the——

Mr. Belnap: Why don't we clear that up right there, Mr. Enoch?

Mr. Enoch: Yes.

Mr. Belnap: Is Mr. Allen signing the bill as paid on behalf of the Grain Company or the Barge Corporation?

The Witness: He is signing this bill as paid on behalf of—this is made by the barge corporation and he is signing it as manager of the barge corporation.

By Mr. Enoch:

Q. Is Mr. Allen manager of the barge corporation?

A. Yes.

Q. And president of the Allied Grain Dealers Corporation?

A. Yes.

Q. Where is the signature attached,—at Morris, did you say?

A. I rather think so, although I wouldn't say; I don't know.

Q. Now, this is not the return to which you referred?

[fol. 1214] A. No. The grain company does not get this. This is the freight bill returned to the barge company.

Q. Now, is this on a regular form?

A. I think it is. Yes, I know it is.

Q. Is that the form that is made up by Lowell Hoyt & Company or if not by them by whom is it made up?

A. This is made up by the agent of the barge corporation.

By Mr. Belnap:

Q. Is it a printed form?

A. It is a printed form, yes.

Q. The agent just fills it in?

A. He just fills it in.

By Mr. Enoch:

Q. Does the Allied Barge Corporation file any annual reports with the Illinois Public Utilities Commission, do you know?

A. No, sir, I don't think they do.

Q. Has the Allied Barge Corporation ever sought or received from the Illinois Public Utilities Commission any certificates of convenience and necessity?

A. No, sir.

Q. Has the Allied Barge Corporation ever filed any rates for any kind of service performed by it with the Illinois Public Utilities Commission?

A. No, sir.

Q. The Allied Barge Corporation has never gone to the Illinois Public Utilities Commission for anything, has it?

[fol. 1215] A. No, sir.

Mr. Enoch: That is all I have.

Exam. Taylor: Has anybody any further cross examination?

By Exam. Taylor:

Q. Before redirect, Mr. Robbins, I take it that you understand the question before the Interstate Commerce Commission in this proceeding? That is to say, it is a question as to the cancellation of the use of the proportional rates eastbound out of Chicago or other points on ex-barge grain.

A. Yes, sir, I understand that.

Q. Now, I take it that you understand, then, that the availability of those ex-barge rates to the proportional rates in connection therewith is an advantage to you and your shippers?

A. We think it is, yes.

Q. Do you have anything to do with the surrendering of those bills, the one that was shown to you a moment ago, exhibit 32, surrendering them for the purpose of getting the availability of the proportional rates, with the inspection bureau, the bill that says or that you say is endorsed, "Transit Bureau" and has the number "392790?" Now, the purpose of that was so that the shipment would be properly policed through the transit bureau so that they could protect on the outbound movement the proportional rate.

A. Yes.

Q. Did you or your company, the barge company, have anything to do with the surrendering of the bills for that [fol. 1216] transit stamp on there?

A. Yes, they issued this bill or a copy of this bill, of which this is a copy. Is that what you mean?

Q. Who did?

A. The barge corporation.

Q. And they never surrendered it to the inspection bureau?

A. I don't know as to that. I imagine they did.

Mr. Belnap: Pardon me, I didn't get that answer.

The Witness: I don't know whether they did or not. I support they did but I don't know.

Mr. Belnap: You suppose who did?

The Witness: The barge corporation. I don't know anything about that. That is out of my jurisdiction.

By Exam. Taylor:

Q. So far as the Allied Grain Corporation,—was this the Allied Grain Corporation's grain when it arrived in Chicago?

A. Yes, sir.

Q. It belonged to you?

A. Yes, sir.

Q. I should imagine it would be your company, the grain company, that would surrender it for the inspection bureau stamp.

A. The grain company had nothing to do with the transportation of the grain. The barge company had the transportation of the grain.

Q. Well, do you have any agreement with the Eastern [fol. 1217] lines for the protection of joint through or proportional rates?

A. No, sir.

Q. Neither verbal, written or implied?

A. None that I know of.

Exam. Taylor: Redirect?

Mr. Day: I was a little bit late getting back. I wonder if I may ask a few questions?

Exam. Taylor: If that brings up any question, Mr. Day, proceed.

By Mr. Day:

Q. Just before we recessed, Mr. Robbins, you made the statement to me that Lowell Hoyt had issued the particular paper introduced here in evidence as exhibit 32.

A. Well, it was issued out of his office. There is an agent of the Allied Barge Company in Lowell Hoyt's office.

Q. Who pays him?

A. The Allied Barge Company.

Q. How much do they pay him?

A. That I don't know.

Q. Well, he is your agent, isn't he?

A. I am not manager of the barge corporation.

Exam. Taylor: Which barge company, now, are you talking of, Mr. Day?

Mr. Day: His own, as I understand it.

The Witness: The Allied Barge Corporation.

Q. You are president of the Allied Barge Corporation, [fol. 1218] aren't you?

A. Yes, that is right.

Q. You know how much you pay this man?

A. I think he is paid $250 a year.

Q. From the barge line?

A. I think so.

Q. What are his other duties in addition to issuing these papers?

A. Well, his duties are to sort of keep these barges in motion and let us know where they are, and so forth, and when they arrive into Chicago.

Q. In addition to what you pay him does he get compensation from Lowell Hoyt?

A. I think he does.

Q. Do you know how much?

A. No, I do not.

Mr. Day: That is all.

Exam. Taylor: Redirect?

Mr. Belnap: I would like to ask one question.

Redirect examination.

By Mr. Belnap:

Q. This receipted freight bill goes back to the man who purchased the grain from the Allied, does it not?

A. Yes, it does.

Q. Under that circumstances don't you know that whatever is done with that bill is done by the man to whom you [fol. 1219] sell the bill?

A. Yes, sir. It is, of course.

Mr. Brown: Mr. Belnap, you mean the man whom he sells the grain to.

Mr. Belnap: To whom the Allied sells the grain.

Exam. Taylor: The Allied Company.

By Mr. Belnap:

Q. The Allied Company sells the grain and to that man, to the purchaser is delivered the receipted freight bill and whatever registration of it with the transit bureau is by the man who purchased the grain?

Exam. Taylor: That was not the testimony.

Mr. Belnap: He said he didn't know. He assumed certain things and I think he was assuming things wrong and I think he now realizes, but he knows that they do not retain that paid receipt at all. They pass it on to somebody.

Mr. Day: Mr. Belnap, are you testifying to the facts?

Mr. Belnap: No, this gentleman on the stand is testifying.

Mr. Day: As I understand it you are making a statement contrary to what he testified to.

Mr. Belnap: No, but he testifies now that the paid receipted freight bill goes to the purchaser of the grain. Everybody knows that, Mr. Day.

Exam. Taylor: In connection with the registration on there Mr. Robbins, as I understood, said they would see to it that that was put in that way.

[fol. 1220] Mr. Belnap: I think he said he thought it was, Mr. Examiner, and I think he is now correcting his testimony. If he has not he can explain himself.

The Witness: I have nothing to do with that, Mr. Examiner, the freight outfit. Mr. Allen, who is the manager, has charge of that.

By Exam. Taylor:

Q. But you wouldn't know whether you had an arrangement to secure the benefit of a through rate, either combination or joint through, with the eastern lines? You would know whether you had, wouldn't you?

A. By "arrangement" you mean as a matter of some contract or agreement?

Q. Yes.

A. I am not sure we have not.

By Mr. Belnap:

Q. Now, in the course of your testimony I think you said that since the Mechling Barge Line had been towing the Allied Barge Corporation's barges there had been no occasions on which Mechling had performed for the Allied Grain Dealers that transportation service entirely on his own equipment. Since you gave that testimony have you had occasion to look into that situation further?

A. Yes, I have had and I find that on two separate occasions that Mr. Mechling furnished the equipment, both barge and towing, to handle our grain, on two different occasions.

Q. He provided the complete transportation service?

[fol. 1221] A. Yes, he did.

Q. And in that event do you know what transportation charge was paid?

A. It was 2¾ cents a hundred, as I recall it.

Mr. Belnap: That is all.

By Mr. Root:

Q. Mr. Robbins, does anyone other than a farmers' elevator or an individual engaged in the grain business own any stock in the Cooperative Allied Grain Dealers Corporation?

A. No, they do not.

Q. Now, let us take the example, for instance, of Mr. Mellen, who is the manager of the Mazon Elevator, who sells you some corn: Now, do you purchase that corn from him or do you act as his agent in shipping it?

A. We purchase the corn from him. I tell him what I will give him for the corn.

Q. And you actually make payment to him as soon as the weights are available?

A. Yes, I pay him the following morning, I settle with him for the corn.

Q. And that payment is made whether the grain is in your elevator or on a barge on the way to Chicago?

A. Yes, sir.

Q. Now, in such an event would the Mazon Farmers' Elevator have had title to the grain at the time they sold it to you or would it have acted as agent in buying it from the farmer?

[fol. 1222] A. They buy it from the farmer. They had title to the grain, yes.

Q. Would you just briefly state the steps from the farmer to your place, just what happens? There seems to be a little question on that.

A. Well, there would be no difference whether he bought the grain to ship by rail or whether he bought it to ship to the river. He in both cases bo-*th* the grain and settled for it with the customer.

Mr. Day: You say "he". Now, who does he mean by that?

The Witness: They were talking about Mr. Mellen at Mazon.

Mr. Root: We are talking about the Mazon Farmers' Elevator as an example, to show the various steps in the transaction from the farm to the Allied and from the Allied into Chicago.

Q. Now, after Mr. Mellen buys it from the farmer what does he do then?

A. Well, if the farmer,—or when the farmer is ready to shell the corn,—it might be sold several days before he shelled, before he was ready to shell,—but when he is ready to shell he calls up probably Mr. Mellen or goes to see him and tells him he is ready to shell and Mr. Mellen will call a truck or two if the farmer asks him to, and the sheller and send it out to the man's farm and he shells the corn.

Q. And hauls it where?

A. And he hauls it direct to the river.

[fol. 1223] Q. Now, on your books, the Allied Grain Company, do you show that as a purchase from Mr. Mellen's Mazon Farmers' Elevator or from the particular farmer?

A. It shows on our books as a purchase from the Mazon Farmers' Elevator.

Q. Just tell again how you sell that grain after the Allied once gets it at Morris?

A. Well, as soon as we purchase grain,—we do not speculate in grain and as soon as we purchase the grain,—in fact, we generally know what the market is before we pur-

chase it,—we sell it to someone, either through a commission house or direct to some terminal elevator.

Q. It is then shipped to Chicago, c. i. f. Chicago, is that right, from the farm?

A. That is right.

Q. And Allied's title parts when the grain is taken off in the marine, lake or terminal elevator in Chicago, is that right?

A. I understand when it is weighed in Chicago they complete the transaction.

Q. Now, Mr. Robbins, on cross examination I believe you stated that in making up the amount that you would bid to one of your stockholders or another elevator selling to you, that the difference was about three and a half or four cents under the Chicago cash market. Now, did that three and a half to four cents include this sum of 2¾ cents which you [fol. 1224] have stated as your expense in getting it into Chicago?

A. Yes, that included the——

Exam. Taylor: 2¼, isn't it?

Mr. Day: 2¼ is what he said, yes.

By Mr. Root:

Q. 2¼?

A. That included the transportation charge.

Q. It also included your expenses of elevation at Morris and any profit you might make out of the handling?

Mr. Day: No.

Mr. Root: I am asking him.

Mr. Day: You are leading into something that is contrary to what he testified to.

Mr. Root: Well, he hasn't answered yet.

Mr. Day: I object to your method as improper, as leading the witness, because it is contrary to what the witness said. He said that he made a——

Mr. Root: Just a minute, let me withdraw the question.

Q. Now, what else besides that 2¼ cents per bushel does that three and a half to four cents include?

Mr. Day: Well, now, I object to that question. The witness stated in answer to my questions that in addition to this 2¼ cents for freight, trimming and weighing and inspection they also made a charge for handling and profit,

which would run from three and a half to four cents per bushel. Now your question contemplates that that is all included.

[fol. 1225] Mr. Root: Well, now, here is just the point I am trying to bring out, that your impression is erroneous and I want the man to tell exactly what happened.

Mr. Day: I wrote it down as he said it here.

The Witness: I would like to make a record on it. I don't believe I made that statement.

By Mr. Root:

Q. Mr. Robbins, will you kindly straighten us out on just what that three and a half to four cents included?

A. The three and a half or four cents that we figure under our bid c. i. f. Chicago includes the freight and the trimming and inspection and our handling charge and a small profit.

Q. In other words, do I understand that means that includes everything that the Cooperative Allied Grain Dealers Corporation gets out of it, is that right?

A. That is all of it, yes, sir.

Q. And if you made any statement prior in your testimony which might be construed as contradictory to that do you want to correct it?

A. I do.

Exam. Taylor: The record will speak for itself.

By Mr. Root:

Q. Mr. Robbins, on cross examination there were a number of questions asked you in regard to some deductions which are or may be made on corn which for one reason or another does not grade. Now, are those deductions that are made on grain shipped by barge any different than the [fol. 1226] deductions that are made on corn to be shipped by rail?

A. No, they are not.

Q. As a matter of fact they are identical, are they not?

A. They are the same.

Q. Have you ever had any complaints from any of your customers as to the way you grade or test this corn that you handle in your elevator?

A. We have never had any complaints, no.

Q. And that, I take it, is 6,250,000 bushels that you handle, is that correct?

A. That is right, it is.

Q. Mr. Robbins, does the elevator located at Lisbon Center, Illinois, which is a stockholder in the Cooperative Allied Grain Dealers Corporation, have any rail facilities at this time?

A. No, they have not.

Q. On what railroad were they located?

A. They were on an electric line out of Morris. I don't know just what the name of it was but it was abandoned about a year ago.

Q. As a matter of fact it was the Fox & Illinois Union, or was the Fox & Illinois Union that used to go from Morris to York, is that right?

A. That is right, yes.

Mr. Root: I believe that is all, your Honor.

Exam. Taylor: Mr. Macaulay?

[fol. 1227] Mr. Macaulay: I have just one question.

Q. With reference to the discounts which are made, are those made in accordance with the standards set up by the Board of Trade of Chicago?

A. Yes, they are.

Q. And do you keep—do you endeavor to follow the grading as established under the Board of Trade regulations?

A. We try to follow it as closely as we can, yes.

Q. And are your charges or your discounts approximately the amount of discounts which will be afforded that grain when it reaches Chicago?

A. As near as we can tell it it is.

Q. And if the discount should be five cents or ten cents your belief is that that would be about the same discount as the grain would be discounted if it arrives in Chicago?

A. Yes, sir.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: That is all, yes.

Exam. Taylor: Any further questions?

Mr. Enoch: If your Honor please, in my questions to Mr. Robbins in connection with the Commission here of Illinois I referred to it as the "Illinois Public Utilities Commission."

Q. Would your answers, Mr. Robbins, have been the same if I had said "The Illinois Commerce Commission"?
A. Yes, they would.

[fol. 1228] Mr. Day: I have some questions on recross.
Exam. Taylor: All right.

Recross examination.

By Mr. Day:

Q. Mr. Robbins, will you fix the time for these two occasions on which Mechling furnished all of the equipment?
A. I can't fix the time unless I look at my records.
Q. You don't know approximately the time, since you started operations in November, 1938, when it would be?
A. I rather think it would be about last August but I am not positive as to that.
Q. About August, 1939?
A. Yes.
Q. In any case it would have been sometime last summer or thereabouts?
A. Yes.
Q. And at that time, Mechling charged 2¾ cents?
A. Yes, that was his regular charge.

Mr. Belnap: A hundred?
The Witness: That was per hundred.

By Mr. Day:

Q. Per hundred pounds?
A. Yes.
Q. Did you say "per hundred" at the time?
A. I think I did.
Q. And when the freight bill, such as exhibits 32, shows a charge of 1¾ cents for beans and 1.4 cents as the haulage [fol. 1229] charge for oats, that is merely, as I understand it, the arbitrary charge which you deduct in your buying and selling of this grain?

Mr. Root: Wait a minute, I don't understand that question. May I have it read to me?
Exam. Taylor: Read the question, Mr. Reporter.
(Question read.)

Mr. Belnap: I was going to inquire, when you use the word "you" are you speaking to him as the Allied Barge Corporation or the grain dealer?

Mr. Day: As the grain dealer.

A. You asked if I deduct that from the——

Q. You stated when you buy grain, when you buy corn you deduct 1¾ cents as the transportation charge?

A. Yes, that is right.

Q. And, therefore, the barge representative at Chicago, if he makes out these freight bills, merely shows that 1¾ to square the charge on the bill of lading with what your actual practice is, doesn't he?

A. Yes, but let me correct you. I don't deduct that from the price that I bid my customers. Is that what you meant? I make my bid and have already deducted the freight when I make my bid to him.

Q. That is what I say.

A. Yes.

Q. And as that deduction you use 1¾ cents per bushel?

[fol. 1229a] A. Yes.

Q. Now, then, your testimony is that you pay Mechling one cent for towing?

A. Yes. Well, that is a difference on the oats, see. On this oats——

Mr. Belnap: Just a minute, Mr. Examiner. I think that has to be straightened out. Who do you mean by "you"? The gentleman is testifying part of the time as manager of a grain dealers organization.

Mr. Day: He testified that they paid one cent to Mechling.

Mr. Belnap: Who? You don't identify him.

Mr. Day: It doesn't matter who. It is all one organization as far as I am concerned. This gentleman represents both the Allied Barge and the Cooperative Grain Dealers Corporation.

Mr. Belnap: I understand there is a relationship between them but I think the record would be clearer, Mr. Examiner, if we at least kept the legal entities in mind as we went along with the testimony.

Mr. Day: I am satisfied, Mr. Belnap, to have the witness specify.

The Witness: The Barge company, of course, is the one who pays Mr. Mechling.

Q. The Allied Barge——
A. The Allied Barge, yes, sir.
Q. ——pays Mechling one cent?

[fol. 1230] Mr. Belnap: One cent what?

Mr. Day: Per bushel. This is matter that he gave me in previous testimony.

Mr. Root: Get the bushels and per hundred straightened out.

The Witness: This is bushels on corn and beans and it is 8/10 of one cent on oats.

Exam. Taylor: Why that difference?

The Witness: Well, you can put more oats in a barge than you can corn.

By Mr. Day:

Q. Well, now, can you?
A. Yes, sir.
Q. Isn't the displacement of oats much more per pound than corn?
A. Not per bushel, though.
Q. Well, it is 32 pounds per bushel of oats?
A. Yes.
Q. And it is 60 pounds you figure for shelled corn?
A. No.
Q. 56?
A. Yes.
Q. So wouldn't there be a greater displacement, therefore?
A. No, there is not.
Q. Oats are what we regard as a light and bulky grain, aren't they?
A. Nevertheless you can put more oats in a barge than you can corn.

Mr. Root: You mean more bushels?

[fol. 1231] The Witness: I mean more bushels. You don't put more pounds in but you put more bushels in.

By Mr. Day:

Q. Now, let us get back on the track again, if these gentlemen have interrupted sufficiently. You were explaining that the Allied Barge pays Mechling one cent per bushel and that your deduction as the Cooperative Grain Dealers Corporation is 1¾ cents for transportation, is that right?

Mr. Root: Now, your Honor, I object to that line of testimony. The witness has said he didn't make any deduction. He has explained how he computed his bids to his customer and I don't like that word "deduction".

Mr. Day: He stated, and I wrote it down here, that 1¾ cents was what he deducted for freight. I will give you the figures, if you are making an objection, what the 2¼ is, if you want to hear them.

The Witness: That is right.

Mr. Day: The trimming was 35/100 of a cent; weighing and inspection was 15/100 of a cent; the freight was 1.75 cents; making a total of 2¼ cents that the witness deducted in buying the grain from his customers, from his clients or members.

Q. That is right, isn't it?

A. We deducted that from the price we paid to the customer, yes, that is right.

Q. Now, then, this 1¾ cents that your representative, or your joint representative with the Lowell Hoyt Company [fol. 1232] showed on the freight bill represented that 1¾ cents, did it not?

A. Well, part of it was 1.4.

Q. Or 1.4 in the case of oats?

A. Yes, that is right.

Q. But what you actually paid,—what your Allied Barge Company actually paid Mechling was one cent?

A. That is right, on the corn and beans.

Q. Yes. And that 1¾ cents shown on these freight bills had no relation to what Mechling actually charged?

A. No, not in that case.

Q. Now, you stated that you made settlements with your people when you had ascertained the weights whether it was when the grain was in the elevator or on the barges. Can you tell us just when you do ascertain the weights?

A. We ascertain that soon as it goes over the scales.

Q. At the elevator?

A. At the elevator, yes.

Q. Prior to loading on the barge?

A. Yes.

Q. Now, then, in view of your contradicting previous answers to questions I just previously asked you I would like to ask you again about this handling and profit item.

A. All right, go ahead.

Q. What do you deduct for handling?

A. Our handling cost was three-quarters of a cent.

[fol. 1233] Q. What do you deduct for profit?

A. Well, the rest of that three and a half to four cents, depending on conditions.

Q. Well, now, just tell me, please. Don't try to make your answers square with what was asked you on redirect. Just tell me what the actual figure is.

A. It is a sliding scale.

Q. What is the slide?

A. Well, from one cent to three-quarters of a cent.

Q. From one cent to three-quarters of a cent?

A. Yes.

Q. And this three-quarters of a cent for handling is constant, as I understand it. There is no slide to that?

A. Well, that was the average cost last year of handling.

Q. Is it constant or not?

A. It varies from day to day, perhaps not much.

Q. Tell us how much it varies?

A. It depends on how much grain goes over the scales.

Q. Tell us how much it varies, please.

A. I can't tell you how much it varies. If our expense is so much and we——

Q. Five-eighths to seven-eighths?

A. If our expense is about so much per day and we take in 10,000 bushels it is higher per bushel than it would be if we took in 30,000 bushels.

[fol. 1234] Q. Now, on these occasions when Mechling charged you——

A. What is that?

Q. On these occasions when Mechling charged you 2¾ cents a hundred that was for corn, was it?

A. No, one place was not for corn.

Q. What was it?

A. One was for oats.

Q. One was for oats?

A. Yes.

Q. And what was the other?

A. The other was for corn.

Q. The other was for corn?

A. Yes.

Q. And in what quantity?

A. Now, that may be either corn or beans. I wouldn't say whether it was either corn or beans.

Q. But in any case Mechling made the same charge to you?

A. Yes, that is right.

Q. Regardless of the commodity?

A. That is right.

Q. And what quantity, do you remember, that was shipped at that time?

A. There was just two barge loads.

Q. Two barge loads?

A. Yes.

[fol. 1235] Q. Were those barges of about equal capacity to yours?

A. I remember one of the barges was a large barge. I don't remember the other barge. I mean a 30,000 bushel barge.

Q. You call a large barge a 30,000 bushel capacity?

A. That is what I remember. The other one may have been a small barge; I don't remember plainly.

Q. You say you have never had any complaints about the grading of grain that you handled?

A. No, sir, we never have, that is right.

Q. Such complaints are common ordinarily, aren't they?

A. Perhaps.

Q. Well, you know they are, as a grain dealer, do you not?

A. Well, they haven't been common with us.

Q. Well, I mean they are in the trade, though, generally?

A. They are somewhat.

Q. Yes, but so far as your six million and a quarter bushels are concerned you have never had any?

A. That is right.

Q. And you would know it if you did?

A. Yes.

Mr. Day: That is all.

Exam. Taylor: Do you have any further questions?

Mr. Belnap: Yes, I have a question or two.

Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. I would like to just get straight in my own mind about [fol. 1236] who is doing what to whom. In other words, I would like to keep your grain corporation separate from your barge company, if I may, as I trace through these payments. Now, you speak about deducting 2¼ cents per

bushel. Am I correct in understanding that is the amount that the grain corporation takes into consideration in bidding the country elevator for grain?

A. That is right.

Q. The deduction is one in your own mind rather than in the statement rendered to the man from whom you buy, however?

A. That is right. It is in the prices and not in the statement rendered to him.

Q. Yes. Then the grain is in the possession of the grain corporation after that price is paid?

A. Yes, sir.

Q. And the grain corporation retains title to that until the grain arrives at the unloading point in Chicago?

A. That is right.

Q. Now, to get that grain to Chicago do you have an amount on corn of 1.3 cents a bushel?—I mean 1¾ cents a bushel?

A. Yes.

Q. That is, the grain corporation?

A. Yes.

Q. So I understand that is the amount that is paid to the barge corporation for the transportation?

[fol. 1237] A. That is right.

Q. And then the barge corporation in turn pays Mechling one cent out of the 1¾ which it gets?

A. That is right.

Q. It pays Mechling for the towing?

A. That is right.

Mr. Belnap: Thank you.

Mr. Brown: Who pays for this trimming, weighing and inspection?

The Witness: What is it?

Mr. Brown: If he wants it cleared up why doesn't he ask who pays for this trimming, weighing and inspection?

Mr. Belnap: I understood he explained the grain corporation did that.

Mr. Brown: That is right.

Mr. Root: That makes up the rest of the 2¼.

Mr. Belnap: Is that so, Mr. Robbins?

The Witness: Yes.

By Exam. Taylor:

Q. Mr. Robbins, your exhibit 39 purports to be the by-laws of the Cooperative Allied Grain Dealers Corporation of Morris, Illinois. Are there similar by-laws made by the Allied Barge Corporation?

A. Yes, sir.

Exam. Taylor: They are not in evidence. Do you want to put those in, Mr. Root?

[fol. 1238] Mr. Root: I can supply that all right. We haven't got any here. It may take a day or two to get them up from Morris.

Exam. Taylor: Will you try and do that?

Mr. Root: I will try and do that.

Exam. Taylor: Is that all from this witness?

Mr. Root: Wait, I beg your pardon. We have no printed by-laws of the barge corporation. The only by-laws of the barge corporation are the ones in the charter. We have none printed.

By Exam. Taylor:

Q. Are you familiar with the charter of your company, of the barge corporation?

A. Of which company?

Q. Of the Allied Barge Corporation?

A. I think I am, yes.

Q. It is incorporated to do what kind of business?

A. Mr. Enoch has that charter here.

Q. All right. Are you familiar with it? You are president of the company.

A. Well, I am fairly well familiar, yes.

Q. I just am asking you if you know what business the barge company is permitted to do under the certificate of incorporation?

A. They are permitted to transport grain and buy and sell grain, I believe that is in there, and other commodities.

Q. Transport for whom?

A. No one. It is not specified as to whom.

Q. But you do not exercise that power? Instead you [fol. 1239] allege that the transportation is performed by Mechling.

Mr. Root: Your Honor, I did not hear that question. May I have it re-read?

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

The Witness: Well, it is performed by Mechling to this extent. He pushes the barges owned by the Cooperative Barge Corporation.

By Exam. Taylor:

Q. Well, do you take the position that you do not transport this grain?

A. No, I do not take that position. I take the position that we do transport the grain. The barge corporation you mean?

Q. Yes.

A. Yes.

Q. And they are what kind of a carrier?

A. Well, we are probably a private carrier.

Q. A private carrier?

A. I imagine we would be classed that way.

Q. It is not open to the public?

A. No, it is not.

Exam. Taylor: Anything further from this witness? Witness excused. Next witness.

(Witness excused.)

Mr. Root: I would like to call Mr. L. J. Norton.

Exam. Taylor: Very well.

[fol. 1240] L. J. Norton was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

A. L. J. Norton.

Q. What is your business or occupation?

A. I am professor of agricultural economics in the University of Illinois.

Q. Will you state what experience you have had in regard to that matter, I mean in your line, in your profession?

A. Well, I was graduated from Cornell University College of Agriculture, took a doctor's degree in agricultural economics from that institution in 1921. Since that time I have been employed by Cornell University and the University of Illinois in research work and in teaching in fields related to marketing and other agricultural economics lines, except for a period of two years and a half when I was with the Farm Credit Administration.

Q. Are you familiar with the issues in this case?

A. Yes, sir.

Q. They are, namely, the amendments to tariffs filed by eastern carriers which will remove reshipping privileges to the East from ex-Illinois waterway grain.

A. That was my understanding of the question.

Mr. Enoch: I think it is a little dangerous to try to re- [fol. 1241] cite the issues that way. I think they are very much broader than that.

Mr. Root: Well, you can cross-examine him on that.

Mr. Enoch: Well, but I thought perhaps the witness might be misinformed by that statement.

The Witness: May I speak of them? I understood that the hearing dealt with the question of the privileges of reshipping grain that came to Chicago from the Illinois waterway.

Mr. Enoch: That is right.

The Witness: That is what I understood that the purpose of this hearing was.

By Mr. Root:

Q. Have you prepared a statement that you would like to make in this case?

A. Mr. Examiner, Mr. Chester A. Hunt, who is the president, as I understand it, of the Farmers' Square Deal Grain Company of Morris, Illinois, which company is a stockholder in this Allied Grain Company which has been discussed here today, asked me to appear and explain my views concerning the grain traffic which has developed on the Illinois River and waterway. I have known Mr. Hunt for a good many years and apparently some statement which I had made, or was reported to have made, disturbed him and he wanted to get my views on the matter straight.

Mr. Enoch: Will you pardon me just a moment?

The Witness: Yes, sir.

Mr. Enoch: If your Honor please, if we are not going to [fol. 1242] be apprised of what is to be developed here by questions, I wonder if counsel wouldn't state just what subject this witness is going to testify about?

The Witness: May I answer that?

Mr. Root: Go ahead and answer it. You can answer it better than I can.

The Witness: The question that I was going to discuss was the effect which, in my opinion or in my judgment, of the development of this grain traffic upon prices paid to farmers in the territory served by the Illinois waterway.

Mr. Enoch: I want to register an objection to that type of testimony. I don't think that is a subject that can be dealt with by expert station. This thing has been in practice here for two or three years and the Commission can draw its own conclusions from the facts that are recited by the witnesses who are familiar with them.

Mr. Root: May I ask a question, then?

Exam. Taylor: Yes.

By Mr. Root:

Q. Are you familiar with, or have you made a special study and are you familiar with the conditions in the Illinois waterway district?

A. I was getting ready to state——

Exam. Taylor: Just a moment. Counsel asked you a question.

By Mr. Root:

Q. You are familiar?

A. Yes, sir.

[fol. 1243] Q. You have made a study of those conditions?

A. I have followed the developments of the growth of this traffic and the things related to it since 1936.

Exam. Taylor: You may proceed.

By Mr. Root:

Q. Proceed.

A. As I have just indicated, in 1936 I was given the responsibility for economic studies in grain marketing at the

agricultural experiment station of the University of Illinois. It seemed to me that the changes in methods of transporting grain should be studied. The most obvious of these changes were, first, the increased use of trucks and, second, the movement of grains on the Illinois and Mississippi rivers and connecting waterways. Since 1936 I have maintained contact with the developments in connection with movement of grain on these rivers and observed the growth in volume and the development in assembling methods. Anyone familiar with grain marketing knows that grain tends to move by the cheapest transportation route available and that extensive use of water routes is made whenever they are available. The best example is the extensive grain traffic which has developed on the Great Lakes between ports close to producing areas and ports close to consuming and exporting points in the East. Grain is a cheap, bulky and relatively non-perishable commodity which tends to move by water when water routes are available. It was therefore natural for a heavy grain traffic to develop between points [fol. 1244] in the heavy grain-producing sections adjacent to the Illinois waterway and Chicago when a waterway became available to provide cheap transportation. Associated with this development, of course, was the growth of a system of improved highways and use of better trucks, which cheapened assembling at the rivers. The development of an extensive trade in grain on the river is evidence that it did provide a cheaper means of transportation and higher returns to the producer. Otherwise the traffic would not have developed nor would the farmer have altered his marketing arrangements. For the past three years we have had at the University of Illinois a session dealing with grain marketing during our annual Farm and Home week, to which large numbers of farmers and farm people come. In January, 1939, at this session, I discussed the topic: "Grain Transportation on the Illinois River." In this talk I made the statement, "It should be noted that the producer gets only a part of the saving in transportation (from use of lower cost river transportation.)" I put that in in order to indicate the point of what I was talking about, the subject I was discussing. What I meant by this is obvious, I think. To illustrate, if a rail rate is 10 cents per 100 pounds and a competing water rate is 4 cents, the producer does not get the entire difference of 6 cents per 100 pounds,

which would be equivalent to 3.36 cents per bushel of corn. The grain must be hauled to the river and this involves expense. Also the expenses and profits of the new facili- [fol. 1245] ties on the river must be borne by some one. As the distance from the river is increased, the grain has to be hauled longer distances to the river. The difference in cost between hauling to the river and to a local elevator then increases. At some point back from the river the costs by the two methods, namely, first truck to local elevator and rail and, second, truck to the river and barge, are equal and then the traffic to the river ceases. In other words, some part of the apparent saving in freight by river as compared to rail haul is absorbed in assembling the grain for shipment at the river. At Morris, Illinois, which is a large shipping point, a large volume of grain, especially corn, is produced within a short radius. Also, two river elevators compete for business at that point. This large volume of grain close to the river and the competition that exists there, together with the large volume of grain that has moved by river from Morris, indicate clearly that prices received by farmers in that vicinity are higher than they would be if there were no river traffic. The question at issue is one involving the continuation of the privileges of reshipping grain received at Chicago by river barge at the same rate as applies to grain received on so-called Illinois proportional billing. Presumably the ability to reship grain on such billing makes the ex-river grain worth more at Chicago than it would be if such privileges were denied. I have made no study of the effect of billing on discounts at Chicago. At St. Louis, however, a study [fol. 1246] was made under my direction and it indicated that "no tonnage" wheat in that market sold in 1937 and 1938 at average discounts of 1.3 cents for No. 2 red winter wheat and of 1.2 cents for No. 3 red winter wheat when compared with prices of similar grades carrying railroad billing. Market channels can be made or closed by comparative transportation costs. Producers of grain in Illinois are anxious to keep open the most economical channels so as to reach the widest possible markets. The river traffic in grain has grown up on the basis of lower aggregate costs and by access to the reshipping privileges which have helped to establish Chicago as a leading grain market. The interests of the producers of grain who are

located within reasonable hauling distance from shipping points on the Illinois waterway will be best served if rate privileges regarding reshipment from Chicago of grain received from the waterway are retained. That completes my statement.

Exam. Taylor: Anything more on direct?
Mr. Root: That is all, your Honor.
Exam. Taylor: Any other questions?
Mr. Belnap: No. I haven't any, Mr. Examiner.
Exam. Taylor: Cross-examine.
Mr. Bradford: I have one question.

Cross-examination.

By Mr. Bradford:

Q. Mr. Norton, do you believe that a man or a farmer living ten miles east of Kankakee, Illinois and trucking [fol. 1247] grain to Kankakee can pay a higher freight charge to the Eastern markets than a farmer ten miles east of Morris and trucking grain to Morris?

A. Well, if one is accessible to a transportation route that has a lower competitive cost I should think that the farmer who is accessible to the transportation route should be entitled to the benefit of that lower rate.

Q. If the farmer at Kankakee,—or east of Morris is able to secure a better price would that have any effect on the price that the man east of Kankakee receives on that trucked grain into Kankakee where the freight charge is higher?

A. Well, as between the two the man with the lower transportation cost would receive the higher net price but I don't see that that would—that necessarily that lowers the price received by the farmer who does not have the access to the cheaper transportation.

Q. You cannot see any difference between hauling grain via a privately owned barge line or by a privately owned truck line when that grain gets to market. Is there any difference in that grain from a transportation standpoint east of that market?

A. I think, Mr. Examiner, that that question involves—the answer to that question involves a technical knowledge of traffic matters which I do not claim to have.

Mr. Bradford: Mr. Examiner, the witness made the statement that he conducted a study as to the effect that the

[fol. 1248] withdrawal of these reshipping rates would have on the price.

The Witness: And I said that I thought that at times it would lower the value of that grain and that would be a detriment to the man who now had that.

Q. I am just trying to develop that further and see what effect it has on the price of grain generally and asked him if when that grain that moves by barge, privately owned barge, gets to market, if there is any difference in that grain when it moves out of the market than it would if it arrived by truck? Now, he made a statement on direct that he had conducted an investigation and one of the elements that he investigated was movements by truck. I have listened very carefully.

The Witness: I said that the two lines—the statement that I made,—may I explain the statement I made? I said that looking into the field the new developments in transportation were important and the two new developments in transportation which were of importance were, first, the trucking of grain and, second, the use of waterways, but from then on I didn't say anything about that I had studied trucks but as you asked the question the second time I am willing to answer it; that is, as you restated the question I would be willing to answer it, if I may have it read to me.

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

The Witness: On the first part of that question, it does [fol. 1249] not seem to me that the mere fact that grain moves to Chicago and is paid for at Chicago prices reduces the Chicago price of grain. Therefore, I don't see that a lower price is thereby reflected back to the other producers. Now, the second part of the question, I would say that corn was corn, at least so far as its feed value is concerned, and the corn that is received by truck has as much feeding value in it as corn that is received by river barge. Now, the question of the prices which are extended to the reshipping of grain received in different ways is a highly technical matter which has grown up over years, with all sorts of entanglements back of it and on that particular question I do not pretend to have any specialized knowledge.

By Mr. Bradford:

Q. The reason I asked the question is because you conducted an investigation as to what effect the withdrawal of this privilege would have and now you say it is technical and you don't know anything about these privileges.

A. No, I am saying it is technical as to whether it should be applied to trucked grain as against rail grain. I repeat the statement I made in my testimony or in my statement, that the withdrawal of this privilege from barge receipts would at certain times of the year, it seems to me, lower the value of that grain.

Q. May I ask you this question? If the reshipping rate is 26 cents, which it is, from Chicago to New York on the barge grain and grain is trucked to Kankakee, a directly [fol. 1250] intermediate point, and the rate from that point is 34½ cents, do you believe that that would have any effect on the price paid to the farmer in the vicinity of Kankakee when the grain from Chicago moves right through Kankakee?

A. Yes, but is not the elevator here paying on the basis of the,—the elevator operating in the vicinity of Kankakee pays the prices, the Chicago prices, less the cost of shipping the grain to the Chicago market?

Q. He is hauling this grain to Kankakee.

A. All right. Doesn't the same thing apply at Kankakee?

Q. Doesn't the Kankakee man have to take into consideration the price it is going to cost him to get it there when he bases his price he pays to the farmer?

A. I would think that the dealer at Kankakee will pay a price to the farmer for grain based upon all of the outlets which he has for grain and he will take advantage of the one which returns him the highest price and pay the farmer accordingly.

Q. You feel he would take into consideration what it costs him to get to the consuming territory?

A. Of course.

Q. And if that is higher to the man at Kankakee on the grain received by truck than it would be to the Chicago dealer of that grain received by barge he naturally would take that higher cost from the producer when he bought it. That is all.

A. Well, I think that condition would have obtained be-
[fol. 1251] fore the barge traffic developed.

Mr. Bradford: That is all.

By Mr. Enoch:

Q. You referred to this proportional rate as a privilege and you say that the barge grain should have this privilege of the lower rate. That is what you referred to in your statement?

A. I would say it was a privilege.

Q. Yes. Now, no matter how absurd you think this next question is going to be I want you to answer it. Assume that a man raises a hundred bushels of corn over here in Grant Park at Chicago and wanted to ship it East, should he have that privilege of the proportional rate?

A. He is loading the grain—may I ask, to clear up the question, in my own mind,—he is loading the grain out in a freight car at Grant Park?

Q. No. He is going to go to the depot with it.

A. Depot where?

Q. In Chicago. Maybe he will haul it a mile or two miles or a half a mile.

A. Well, the——

Exam. Taylor: The question is do you think he should have the advantage of this proportional rate?

The Witness: There has been no freight movement into this market. The grain is shipped from Chicago? Well, my answer would be "No".

[fol. 1252] By Mr. Enoch:

Q. He should not have it?

A. My answer would be "No."

Q. Now, Mr. Norton——

A. Because, as I understand it, these proportional rates grow up around markets. That is to say, they are developed to equalize—they are developed around the grain trade out of a given market and this particular person, the farmer, has to find some way of getting his grain into the Chicago market I would say.

Q. All right. Now, suppose that instead of taking it direct to the depot he sells it to a grain dealer here in Chi-

cago and the grain dealer puts it in the elevator at Chicago or South Chicago and later ships it out, should that grain move on a proportional rate, have the privilege of moving on the proportional rate?

A. I wouldn't think that the example that you cited falls within the theory around which I understand these proportional rates and reshipping privileges have been developed.

Q. Well, how far away from that depot or elevator do I have to go before I can come under this theory that seems to be important to you?

A. Well, I would say a particular farmer would have to go out to correspond with the—would have to fit into the pattern which has been developed in thi. w' ole scheme of reshipping rates, so I don't know that I could definitely answer your question as to how far out he should go. He has got to take advantage of the pattern of rates which [fol. 1253] have grown up.

Q. Morris is about 70 miles from Chicago, isn't it, or thereabouts?

A. Yes.

Q. Now, take a farmer north of Morris, fifty or a hundred miles away, he has got a farmer, he is a good corn producer and he doesn't have any waterway, so he hires a trucker to handle his corn into Chicago and if he has a truck of his own he hauls it in: Should he get the privilege of the proportional rate?

A. As I understand, those privileges have never been extended to truck shipments.

Q. Should he have them?

A. Well, I don't see how he could have them if the rates have been built——

Q. Why not?

A. Well, because they have never been extended. That is to say, as I understand it there has never been any integration of rail and truck rates which provide for reshipping priveleges on truck grain.

Q. Will you ignore the past history of the rates?

Exam. Taylor: Just a minute. Do you understand that there is any integration of the barge and the rail rates?

The Witness: I understand that such privileges have been in existence.

Q. You used the word "integration." I want to know the method.

[fol. 1254] A. May I change the word "integration" to the word "application?" The application of reshipping rates to grain received by truck, if I may make that change. Just changing the word "integration" to "application".

Q. What Mr. Enoch has in mind, the grain that moves up to Chicago from this point fifty or a hundred miles out also pays a rate to the truckers, just the same as the man at Morris pays a rate on the barge.

A. May I repeat what I said, that as I understand there has never been any—and I believe I am correct—application of the reshipping rates on grain received at a market via truck.

Q. Why shouldn't there be?

A. It seems to me that that question, if I may say so, goes beyond the issues involved in this case here.

Mr. Day: You are testifying as an economist, aren't you?

The Witness: Yes, sir, that is right.

Mr. Day: The witness, as I understood it, was testifying as an economist from the University of Illinois.

The Witness: That is right.

Mr. Day: Not as a partisan witness for one side or the other.

The Witness: No.

Mr. Day: The questions that both Mr. Enoch and the Examiner propounded are questions of economics.

Mr. Belnap: May I inquire who is cross-examining the [fol. 1255] witness now?

Exam. Taylor: Proceed.

Mr. Day: I will be properly introduced to you after a while.

Mr. Belnap: I would like to make this observation, if the Examiner please: As I understand it, the Interstate Commerce Commission has ruled that under its construction of the Motor Carrier act there cannot be proportional rates applicable on a truck-rail movement. That under their construction of the Act, if there is a movement by truck and rail it must be a movement under a single factor rate. I may be wrong in that but that is my understanding of what the Commission has ruled. I understand they have come to that conclusion on the theory that when Congress regu-

lated motor trucks it made no provision for anything else, so it seems to me that this rather academic discussion is even beside the point even if we confined it to the economic basis, which is the only thing the witness directed himself to on direct.

Exam. Taylor: Now you are right.

Mr. Belnap: This witness has not qualified himself on the technicalities of rate making. He is talking about economics, about economic conditions.

Mr. Day: We do not agree with Mr. Belnap's legal conclusions on this proposition, Mr. Examiner.

The Witness: May I answer the question——

[fol. 1256] Mr. Day: Let the record so show.

Exam. Taylor: What is the question?

Mr. Enoch: I would like to ask a question now.

The Witness: All right.

Q. Will you divorce this from the rate situation and the theoretical situation this is in and just tell me what your opinion is as an economist, in equity and good conscience, why if the man bringing corn up the river 70 miles by water is, as you say, entitled to this so-called privilege and a man coming the same distance in his own truck is not entitled to the same privilege?

A. Well, the answer I would make to that is that the man coming up the water is more accessible to a cheaper method of transportation than the man coming 70 miles by truck.

Q. Well, would you say, then, that the man who has to pay the higher inbound rate should pay the higher eastbound rate also?

A. The answer to that question, it seems to me, is tied up with the whole question of proportional rates.

Mr. Day: You are trying to testify as a rate man.

The Witness: No, I am not.

Mr. Root: No, he is not.

The Witness: Excuse me, I am not. I am saying that the answer to that question is tied up with the whole question of rates.

By Mr. Enoch:

Q. What did you mean when you said that the man shipping by water should have the benefit or the privilege of [fol. 1257] this lower proportional rate?

A. I said because he has access to a cheaper method of transportation.

Q. You mean——

A. That, I think, is an economic question.

Q. —so far as eastbound movement is concerned?

A. So far as the movement to Chicago is concerned.

Q. Yes, but you understand that this water situation does not have any effect east of Chicago. That is an all-rail movement.

A. That is part of it. Of course, part of it is by the lakes and part of it by rail east of Chicago.

Q. No, I am talking about the all rail rate out of Chicago. You haven't been,—haven't you been talking about that all the time?

A. Yes, that is right but the way you phrased the question I thought you meant all the movement out of Chicago was by rail.

Q. As I understand your theory, if a man has the cheapest method of bringing his corn into Chicago he should have the cheapest method in moving it out and the fellow who has to pay a little bit higher coming into Chicago must pay something higher getting out so that his total charge will be doubly higher than the man who comes in by water. Now, if that is your opinion will you tell me what the economics of that situation are?

Mr. Root: I wonder if we can have that question read?

Exam. Taylor: Read the question, Mr. Reporter.

[fol. 1258] (Question read.)

The Witness: Well, the comparison——

By Mr. Enoch:

Q. First, is it your opinion?

A. Yes, sir.

Q. All right. Now why?

A. It is a statement of the background for my opinion. The comparison I made is between the cost of reshipping grain, charges for reshipping grain which go out by rail but come in either by rail or water and the position I have taken is that grain that comes in by water is entitled to go out at the same rate as the grain that comes in by rail. Now, may I complete the statement? And the reason for that is that this grain coming in by water comes in by the

agency which can furnish the service at a lower cost. Now, when you come to the question of trucks, which is, after all, the high cost way of bringing it in, my opinion is that until there was a complete integration of rail and trucking operations that the grain coming in by truck would not be entitled to these reshipping privileges.

Q. Let me get your idea on this. Assume, which I think you will be perfectly willing to assume, that it costs a man 75 miles away from Chicago more to move his grain into Chicago by truck than it does a man half that distance from Chicago by truck——

A. I would agree with that, yes.

Q. —now, would you say that the man who moves inbound the greater distance should pay the higher rate out-
[fol. 1259] bound and the man who moves inbound the shorter distance should pay the lower rate outbound?

A. Well, at such times that that was more than a theoretical case there would have to be some equalization of outbound costs in order to maintain parity between various markets and if that grain going out went out at the same rate then the man's grain which came in the longer distance would have a lower value at the farm than the one which came in the shorter distance because it would accumulate more costs.

Q. Should it pay the higher rate?

A. What?

Q. Should it pay the higher rate?

A. From where?

Q. From Chicago.

A. Well, I should think until such time as there was an equalization that the grain going out of Chicago would carry the same rate. That is to say, presumably the costs of moving——

Q. Water and truck and rail ought to carry the same rate?

A. No, all moving out by the same means of transportation, by rail.

Q. Have you studied the effect of this so-called cheaper inbound rate to Chicago by water upon the destination prices in the East at which this grain is ultimately sold?

A. No, sir.

Q. You haven't given any thought to that at all?

[fol. 1260] A. In my——

Q. Have you got an opinion on whether——

Mr. Root: Let him answer the question.
Mr. Enoch: What?
Mr. Root: He didn't get a chance to answer the question.
Mr. Enoch: I beg your pardon.
The Witness: I said I had not studied the question.

Q. I understood that to be your answer. Would you care to express an opinion as to whether or not it has any effect from an economic standpoint on the destination price?

A. Yes, sir, I will be willing to express an opinion.

Q. What is your opinion?

A. But it is based upon a general analysis of the market and not on any detailed studies I have made myself. I want that understood.

Q. Yes.

A. In the first place, the increase in volume of grain, or the grain coming into the market, Chicago, via the Illinois waterway could, it seems to me, lower the market price here in two ways, which is what I take it is your question.

Q. No, I am talking about the destination price in the East to the consumer, not the merchant.

A. Well, it seems to me that the grain that is billed out at a certain price would carry the same costs to the consumer whether it comes in via the waterway or whether it [fol. 1261] comes in by rail. Since it is paying the same freight out I don't see why there would be any difference in the price that the consumer paid.

Q. Do you think, then, that the application of this proportional rate on eastern grain,—on water borne grain hasn't any effect on the destination prices to the consumer?

A. Unless it would lower the price in Chicago and then it would lower the whole market and that is what I was,—you asked about its effect on the Chicago price? I don't see how it would affect eastern prices except as it might affect the prices in Chicago.

Q. Wouldn't the answer that you have just given depend wholly on the assumption that these shippers along the Illinois waterway were in position to supply the entire consuming territory with grain?

A. No, I don't think so. It was based upon the assumption that the prices at which grain would be offered for shipment East would be substantially equal on grain whether it came in by water or whether it came in by rail. That is what my answer was based on.

Q. I don't understand that answer if you don't assume just what I have stated because I don't think there would be any explanation possible by you or anyone else as to how any of these other merchandisers of grain at Chicago that get their corn from some other place than along the Illinois waterway could compete with the men who get their grain from points along the waterway.

A. Well, if what you assumed is true, that they sell at [fol. 1262] the same price, they could only compete if they bought grain cheaper from farmers.

Q. Have you thought about that?

A. Well, I mean to say they bought grain cheaper from farmers who are located at points which have higher costs to Chicago than the farmers who are accessible to the waterway. That is what I mean by higher cost. I am not talking of this higher cost at the particular time.

Q. You are particularly interested in the farmers of Illinois?

A. That is right.

Q. Have you given any consideration at all to the effect of this socalled cheaper transportation by waterway on the farmers who are not in position to take advantage of it?

A. Well, that didn't come in my testimony.

Q. No.

A. No. Unless it affects their ability to sell grain in the Chicago market I don't see how it affects them at all.

Q. Well, has it affected them?

A. Well, that goes back to the question which I tried to answer before, or tried to express an opinion on before. That was the question as to the fact or the effect that this grain might have upon the price at the Chicago market and my statement on that point would be that since the volume of grain,—no greatly increased volume of grain has moved into the market because of the waterway in my opinion, [fol. 1263] and that is based upon studies I have made as to how that corn used to be marketed that now comes via the waterway,—since I don't believe there has been any great increase in volume for sale, since I don't believe that the people who are offering this grain via the waterway are selling it below the market prices, I say I don't believe,—I believe it is my opinion that they do not sell it below the market price. I think they are selling it at the current

established market price for grain on the Chicago Board of Trade which, as you know, is rather a fixed thing.

Q. Well, how can a dealer here in Chicago pay relatively the same price for corn to a farmer who cannot ship his corn along the waterway as another dealer who buys corn that can be shipped along the waterway when in the latter instance they have an eight or ten cent cheaper freight rate outbound upon which they can lay that down to the consumer?

Mr. Belnap: May I have that question read, please? I would like to hear the question.

Exam. Taylor: Read it, Mr. Reporter.

(Question read.)

The Witness: I would not assume that that was true. That is, it is my impression,—of course, it could be answered by definite analysis,—that the bulk of the grain that is reshipped from Chicago by rail comes in here on Illinois proportional rates which carry the same outbound rate as does the grain which comes in by water.

[fol. 1264] Exam. Taylor: Just a minute. We will recess for five minutes.

(Whereupon a short recess was had.)

Exam. Taylor: All right, gentlemen, come to order. Mr. Enoch, had you finished?

Mr. Enoch: I have finished.

Mr. Day: I have some questions.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. How long have you been connected with Illinois University?

A. Well, I first came to the University of Illinois in 1923, in September, and I was there continuously until September, 1934, when I had a year's leave of absence to work with the Farm Credit Administration. I returned to the University of Illinois in 1935—I beg your pardon, I left in 1933 and came back in 1934, was there for one more semester and left for another year and a half. I came back in September, 1936, and have been there since then.

Q. You are located at Champaign or Urbana?

A. Urbana.

Q. And the Illinois University is a tax supported institution?

A. It is supported by the State of Illinois.

Q. How long have you known Mr. Hunt?

A. I probably met Mr. Hunt in 1929. He attended a meeting which I addressed in that section of Illinois.

[fol. 1265] Q. You addressed a meeting under the auspices of Illinois University?

A. That is correct.

Q. You met him at that time. Now, when did Mr. Hunt ask you to come here and testify?

A. Last Thursday morning, I think.

Q. Did he call on you at Champaign?

A. He called at my office.

Q. In person?

A. In person.

Q. Did anybody help you with the preparation of your statement?

A. No, sir.

Q. Have you in the past testified in other proceedings for Mr. Hunt?

A. No, sir.

Q. Is Mr. Hunt paying your expenses here?

A. There have been no arrangements made about expenses. I assumed that they are paid by the University.

Q. I see. Now, I take it from your testimony that you were under the impression that the railroads had so arranged their tariffs as to provide for reshipping rates on grain barged into Chicago from the Illinois River?

A. My understanding is that that grain coming in here can be reshipped at the regular reshipping rates.

Q. You don't know that the railroads never made any [fol. 1266] provision in their tariffs to take care of this grain, do you?

A. I have never looked into that matter so my answer would be "No."

Q. The movement, of course, on the Illinois River——

A. Or my answer would be that I don't know.

Q. This movement on the Illinois River you do know did begin only a few years ago?

A. That is correct.

Q. Yes.

A. That is, the present type of movement on the Illinois River began a few years ago.

Q. And you did not know that the railroads, in order to take care of a movement on the Illinois River, had made no change in their tariffs from what they had been previous to this movement, did you?

A. I assumed that the reshipping rates which are under discussion here today had been in effect on the movement since it began.

Q. You assumed that when this movement started that the railroads published some tariffs?

A. No.

Q. Or provided in their tariffs for it?

A. I assumed that that gave them the—that they applied the reshipping rate. I haven't examined the question as to whether they provided for it in their tariffs.

Q. Well, you are under the impression that the railroads [fol. 1267] did do something to provide for the movement of this barge grain?

A. I am under the impression that they applied the reshipping rates.

Q. You don't know, as a matter of fact, that they had done nothing, that their tariffs stand today just as they did twenty years ago?

Mr. Belnap: Mr. Examiner, he is stating an incorrect fact to the witness.

Mr. Day: I am asking him.

Mr. Belnap: Mr. Examiner, here is a witness who has not talked about tariffs.

Mr. Day: Yes, he has talked about tariffs.

Mr. Belnap: I object on the ground it is beyond his direct. If that objection is not sustained I will make another one.

Mr. Day: He has talked about proportional rates. *he* has talked about the railroads having provided for those proportional rates.

Mr. Belnap: I object on the ground this is going beyond the scope of the direct.

Exam. Taylor: Objection overruled.

Mr. Belnap: Then I object further on the ground that Mr. Day's own witness, Mr. Tannehill, pointed out specifically this fact that the eastern lines did make changes in their tariffs on the question as to whether or not the proportional rates were applicable on the ex barge grain.

[fol. 1268] Mr. Day: Mr. Belnap is mistaken.

Mr. Belnap: That happened in the last twenty years. I cannot give the exhibit number now but I can find it later.

Mr. Day: Mr. Belnap is mistaken.

Exam. Taylor: The record will speak for itself.

Mr. Belnap: My objection is that he is asking the witness a question predicated on a statement of fact which is incorrect.

Exam. Taylor: Your objection will be noted on the record.

The Witness: My answer is I haven't examined the tariffs in these cases.

By Mr. Day:

Q. And you don't know whether they are the same or different from what they were before this barge movement started, is that right?

A. Well, I——

Mr. Belnap: Mr. Examiner, I submit that he is disqualified from giving any answer at all because he says he has not examined the tariffs.

The Witness: I presume these tariffs have been changed from time to time.

By Mr. Day:

Q. But you don't know just what the tariffs provided at any given time, isn't that right?

A. I haven't examined the tariffs in detail, that is right.

Q. Now, in answer to Mr. Enoch you stated that a movement out of Chicago to the east via rail should be handled at lower rates but in the instance of grain coming into [fol. 1269] Chicago by barge than when grain from the same or similar point of origin is hauled into Chicago by truck because you said that the barge charge in that case would be cheaper and, therefore, the shipper should be entitled by the same token to a lower charge east of Chicago. Now, assuming that Allen & Company, a large grain dealer here in Chicago—or Bacon & Company, a large grain dealer here in Chicago, moves four million bushels of corn into Chicago by truck every year and he moves it by truck because he finds it is cheaper to handle it that way than by barge, now assuming such cheaper truck travel into Chicago would your answer then be that he should be entitled to a lower charge east of Chicago on the truck grain?

Mr. Belnap: Just a minute, Mr. Witness. I make the objection that a hypothetical question has been asked for which there is no predicate in the record.

Mr. Day: I submit there is a predicate in the record.

Mr. Belnap: There is no showing that——

Exam. Taylor: This witness was introduced on the economic stage of this proceeding.

Mr. Belnap: That is not the basis of my objection, Mr. Examiner. My objection is that he now says, "Assuming there is a lower charge by truck than by water" and I say there is no predicate for that.

Exam. Taylor: The question goes to the economics. The witness may answer if he knows.

[fol. 1270] The Witness: The economics or an economic answer to any question must assume some knowledge of the structure which is being discussed.

By Mr. Day:

Q. Well, you are testifying as an expert witness now.

Mr. Root: Let him answer.

Mr. Day: No, I don't want the witness to argue my answer.

The Witness: I am not going to argue my answer. I want to state the assumptions upon which my answer was based.

Q. Well, I am doing the assuming now. Now, you give the answer.

A. All right. I think the question of reshipping rates upon truck grain involves assuming interrelationships in the effect on the whole grain structure which, I take it, is an economic question that——

Exam. Taylor: Your answer is not responsive to the question.

By Mr. Day:

Q. Assume everything else is equal except the difference in the transportation charge into Chicago.

A. Under existing conditions I would think it would not be desirable to apply the reshipping rates on truck grain.

Q. Don't you want to answer the question?

A. I thought that was the question.

Q. No, it wasn't an answer.

A. All right.

Q. Let me recall to you your previous testimony now, that assuming that barge transporation is cheaper than truck transportation into Chicago——

[fol. 1271] Mr. Root: I beg your pardon.

Exam. Taylor: Just a minute, now, we will have order.

Mr. Day: Just a minute, please. You can have the witness back on redirect.

Exam. Taylor: We will have order. Mr. Day, state your question without interruption.

By Mr. Day:

Q. You have previously stated, Mr. Norton, that in the event of a cheaper transportation by barge into Chicago than by truck, because of that cheaper transportation inbound the shipper should by the same token be entitled to cheaper transportation outbound.

A. I think my statement was cheaper transportation by barge than by rail.

Q. Well, the question addressed to you, though, whether you understood it or not, was truck versus barge into Chicago. You did not understand it when you answered previously, is that it? You thought that the comparison was between barge and rail into Chicago?

A. I am stating now that I thought my answer was between barge and rail.

Q. All right. Now, then, assuming this comparison that I am making between cheaper transportation by truck into Chicago than by barge, should that trucked grain be given a lower rate cheaper than the barge grain eastbound?

A. I am going to reply the same, the answer that I gave before.

[fol. 1272] Q. What is that?

A. That with the present knowledge I have I don't think it is advisable to apply these reshipping rates, which is a lower rate than now applies on trucked grain, to grain that is received at market by truck.

Q. Now, your answer is that even though the truck charge into Chicago is less, that it should pay a higher rate east of Chicago than the barge grain?

A. That is my answer.

Q. All right. Now, you said in answer to Mr. Enoch's questions and Mr. Bradford's questions that you had made the comparison on inbound grain into Chicago by barge on

the one hand and by rail on the other and that there you said that the barge grain ought to be given a lower eastbound rate than the rail grain into Chicago?

A. No, I didn't say that.

Q. You told me that your comparison was with the barge and rail previously.

A. I said as I understand it the point at issue in this hearing is the question between the shipment,—that is, the question as to whether the grain coming in by barge should move out at the same rate as grain which comes in under Illinois proportional rates and that rate is the same rate and not a lower rate.

Q. All right. Now, then, let us go back to the original proposition: Supposing that the barge transportation into [fol. 1273] Chicago is cheaper than truck transportation into Chicago but there is an equal quantity of grain originated, we will say, at Dwight, Illinois, one for truck and one that originates or is handled by rail from Morris, shipped by barge from Morris?

Exam. Taylor: Let us get the question straight now, Mr. Day.

By Mr. Day:

Q. The one shipment originates by rail and is—or by truck and is handled into Chicago by truck.

Exam. Taylor: Which one is that?

Mr. Day: That is the first shipment, from Dwight.

Q. The second shipment originates at Morris and is put on a barge there and hauled into Chicago: From an economic standpoint is there any reason why there should be a different charge assessed east from Chicago by rail?

A. As between those two shipments, no.

Q. They should take the same charge east?

A. With respect, however, to the whole question of trucking it is a broader question than the movement from one point.

Q. But in that case the charge should be the same?

A. From an economic standpoint I would say.

Q. Yes.

A. But that is not meant to assume that that would apply to trucking as a general proposition.

Q. Well, now, assuming that instead of at Dwight one shipment originates at Morris by truck and is hauled into [fol. 1274] Chicago by truck, the other is handled through an elevator at Morris and loaded on barges and hauled into Chicago, is there any reason for a difference in treatment eastbound from Chicago in those two shipments?

A. You have got the——

Q. From an economic standpoint?

A. The answer would be the same as the question at Dwight.

Q. Now, where is the largest corn producing area in the State of Illinois? Some distance south of the Illinois River Valley, isn't it?

A. If you started to draw a line through southern De Kalb County in Illinois and came in close to Chicago—not quite into Chicago and then bend that line to the west—I mean to the south as you go west, from that line down to the line of the Big Four Railroad.

Q. Would you go through Peoria? You would go through Peoria, wouldn't you, with that line?

A. Well, you would need a map to really find the situation. One of the heaviest corn producing sections in Illinois is in this area around Morris. That is one of the heaviest.

Q. Now, wait a minute. You were trying to give us a boundary line and I was trying to make it as definite as I could.

A. All right.

Q. Wouldn't a line drawn through Peoria be about the western boundary of that line?

[fol. 1275] A. No, there would be areas west of Peoria that produce a lot of corn but it is spotty through there.

Q. Yes, but I am talking about the important section, where the large corn tonnage comes from in Illinois.

A. There is lots of corn there west of the Illinois River. I would project the line here clear to Peoria and about to the Mississippi and then except certain spots. That is, I would draw the line I am talking about through southern DeKalb County.

Q. All right, you would bring it over to the river?

A. Yes, but except a number of spots in there which are poor soils.

Q. All right, go ahead.

A. I have done it, I am through.

Q. Oh, no, you have only begun from DeKalb to Chicago and then gone south from DeKalb.

A. All right. Then I may state——

Q. How far south are you going?

A. I would start on the eastern edge there, south of Danville, Illinois, and run in a general westerly direction but north and come out and bend your line up toward Peoria and then project it across the State. Now, it is a very difficult matter to describe that without a map.

Q. But isn't the simple answer that the big tonnage is north of the Big Four line extending through Champaign?

A. I wouldn't answer it that way.

[fol. 1276] Q. You would not?

A. No, sir.

Q. You would go south of there, would you?

A. Yes, sir.

Q. How far south?

A. Well, you are talking about where corn is produced.

Q. No, I am talking about—I am not talking about corn, where corn is produced. All I am talking about is where the big tonnage is. Corn is produced everywhere in the United States, you know that as well as I do.

A. Corn is produced in the big tonnage where it is marketed.

Q. No, there is more to it than where it is marketed.

A. All right. I say you start south of Danville, Illinois, about fifteen miles and run west, bend your line north and shoot a little bit south of Peoria and extend it across to the west border of the state.

Q. You would not take in the territory east of Peoria?

A. Yes, that is in there.

Q. Well, Danville and Peoria are about——

A. I have got two lines and everything in between is in my area. Here is a line here and here is a line here. East of Peoria is included in my area.

Q. So far as you concerned this territory around Morris is just as great a corn producing territory as the territory around Champaign or Peoria, is it?

[fol. 1277] A. I think it is more of an important area.

Q. You do?

A. Let me finish my answer. I think it is more important than the area in the immediate vicinity of Peoria.

Q. Well, by immediate vicinity you mean five or ten miles?

A. That is right.

Q. Yes.

A. Yes.

Q. But when you come east of Peoria along the highway you don't find any better corn country anywhere in Illinois, do you?

A. That is true, when you get away from Peoria you see some very good corn country.

Q. I don't mean the city streets or environs. And Champaign is merely a large center of corn? That is similarly so, isn't it?

A. Yes, Champaign County.

Q. And Livingston County?

A. Yes; Grundy County.

Q. You do insist on going back to Morris?

A. Yes, Grundy County.

Q. You had better take a look at the records. That is all.

A. I have looked at it many times.

By Mr. Brown:

Q. Mr. Norton, I think the record shows here that the cost of transportation by barge of corn from Morris for delivery at Chicago is a little over 4 cents per hundred pounds. Now, that is the record here.

[fol. 1278] A. All right, I will accept your statement on the record.

Q. And that the rail rate upon a movement of corn from Morris, Illinois to Chicago is 5 cents per 100 pounds, one man shipping by barge and the other shipping by rail and the rail movement paying one cent a hundred pounds more than the barge shipper: Would you say that both of those shippers should have out of Chicago the same reshipping rate to the East?

A. Well, if the railroad extends that privilege.

Q. What?

A. If the railroad extends those privileges.

Q. I don't ask you whether they extended it. Should they have it under your economic theory? Should both those shippers, one shipping by rail at five cents a hundred and another shipping by barge at four cents a hundred, both from Morris, Illinois and both landing at Chi-

cago and both going east of Chicago, should they both have the same reshipping rates from Chicago?

A. I would have to answer "Yes" after my answer to Mr. Day about trucks.

Q. Well, now, if the shipper by rail, who is paying 5 cents per 100 pounds, is denied by these eastern railroads' tariff the right to have the reshipping rate then, according to your answer, the barge should be also denied that privilege?

Mr. Belnap: Mr. Examiner, may I object to that question on the ground that it incorrectly states the fact? The Eastern lines have nothing in their tariffs which deny the reshipping rate on corn moving from Morris at the 5 cent rate.

[fol. 1279] Mr. Day: I think there is nothing on that.

Mr. Belnap: I think Mr. Brown will agree that there is nothing in the eastern lines' tariff like that.

Mr. Day: Whether Mr. Brown agrees with you on that, we don't want to appear to be acquiescing in that.

The Witness: I answered your question from the economic standpoint. It seems to me that the answer to Mr. Brown's question would be made in a total vacuum if you did not consider the factors involved in the whole theory of rate construction, which I don't feel competent to discuss or to answer.

By Mr. Brown:

Q. You stated,—or, rather, I stated two facts: The barge rate of about 4 cents a hundred on corn from Morris, Illinois to Chicago——

Exam. Taylor: I wouldn't call it a barge rate. I would call it a charge by barge.

By Mr. Brown:

Q. All right, a transportation or charge for the movement from Morris to Chicago on corn. There is also in this record exhibits showing that the rail rate on corn from Morris, Illinois to Chicago is 5 cents per 100 pounds. If that corn that moves by rail at 5 cents per 100 pounds, the rail rate, is denied the reshipping rate from Chicago to the east should the barge rate that pays the 5 cent,—that

pays the 4 cent rate from Morris to Chicago have the benefit of that reshipping rate, in your opinion?

A. May I go back and say that I haven't examined this record but, as I recall the actual freight charge by barge [fol. 1280] from Morris to Chicago, it was not 4 cents.

Q. I think the record here shows it was a little bit over 4 cents a hundred pounds.

A. But did that solely include every element of the cost?

Q. It included 1¾ cents per bushel for towing and furnishing the barge and also a half a cent per bushel for trimming and insurance and everything but it all simmered down to 4 cents a hundred or a litle more for the total charge for moving the grain via barge from Morris to Chicago.

A. I have answered that first question. The second answer, I also have answered it.

Q. You haven't answered the question as to whether the barge movement should be denied the benefit of the reshipping rates so long as the five cent rail rate is denied the benefit of the reshipping rate from Chicago to the east.

A. I said they were both equally entitled to it from an economic standpoint. Now, the question as to whether the railroads want to extend those privileges——

Q. Now, you have answered the question—you said they are both entitled to it.

A. I don't think the second question can be answered from an economic standpoint. It involves a number of considerations that I do not feel competent to discuss.

Q. Well, you are talking about the rate adjustment. I heard you mention Illinois proportional rates. What are they?

[fol. 1281] A. Well, they are a system of rates which have grown up.

Q. How did they grow up and where are they now?

Mr. Belnap: Mr. Examiner, I object on the ground this is beyond the witness' direct, as to the details.

Exam. Taylor: The witness specifically made reference to the Illinois proportional rates, Mr. Belnap.

Mr. Belnap: He was not specific. He did not attempt to tell how they grew up or what the level of them was or anything.

Exam. Taylor: Let us see what he knows about them.

The Witness: All right. May I first amplify my statement and say that I used them——

Mr. Brown: I don't hear you.

Exam. Taylor: Mr. Witness, I think you should answer the question, if you can, and then make your explanation afterwards.

The Witness: I have only a very general knowledge as to how it grew up and since that knowledge is so general I hesitate to answer as to specific cases involving rates. That is the reason I have refused to answer,—I have avoided answering certain questions, because I did not feel very competent to discuss them since they were based upon a history of the growth of rates.

By Mr. Brown:

Q. But you don't know anything about that history?
A. Not enough to discuss it with this group.

Mr. Brown: That is all.

[fol. 1282] Exam. Taylor: Anything further from this witness? Witness excused. Next witness.

(Witness excused.)

Mr. Root: Mr. W. H. Allen. Mr. Examiner, I have forgotten to offer exhibits 39 to 44 of Mr. Robbins' testimony. May I offer them at this time?

Exam. Taylor: They will be received.

(Exhibits 39 to 44, Witness, Robbins, received in evidence.)

Wilbur H. Allen was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Mr. Allen, will you state your name, please?
A. Wilbur H. Alllen.
Q. And where do you reside, Mr. Allen?
A. My business address is 829 North Liberty Street, Morris, Illinois.
Q. Now, for the purpose of the record, before you give your statement, will you identify exhibits 45 to 48, inclusive, for the purpose of this record?

A. Yes, sir.

Q. What is exhibit 45?

A. That is the comparative costs in grain shipments from 9½ cent I. P. points, 5 cent lake points and 3 cent barge points and direct——

Exam. Taylor: What do you mean by "I. P. points?"

[fol. 1283] The Witness: Illinois proportional. And direct trucking to Chicago.

By Mr. Root:

Q. Will you identify number 46?

A. This chart, exhibit number 46, shows the results of 24 years of operation of the Farmers' Square Deal Grain Company at Morris, Illinois, operating under the following freight rates: 5 cents per hundredweight from January 8, 1914 to June 25, 1918; 7 cents per hundredweight from June 25, 1918 to August 26, 1926; 10 cents per hundredweight from August 26, 1926 to January 1, 1932; 9 cents per hundredweight from January 1, 1932 to March 28, 1938 and 9½ cents per hundredweight from March 28, 1938 to date, by the Rock Island. 4 cents per hundredweight from September 10, 1937 to May 15, 1937 and 3 cents per hundredweight to date by way of the Illinois waterway.

Q. Will you identify exhibit number 47?

A. Exhibit number 47: This chart shows five different modes of transportation and rates from Morris into Chicago. No. 1 shows the direct river buying; No. 2 shows local elevator buying for the River elevator; No. 3 shows trucks direct from the farm to Chicago——

Mr. Enoch: I think that is sufficient identification. He is simply reading what is on the exhibit.

The Witness: All right.

By Mr. Root:

Q. Now, identify number 48.

A. Number 48 is an exhibit showing cost of moving grain [fol. 1284] from the farm to Chicago by different methods and their savings to the producer.

Mr. Root: Now, your Honor, I would like to offer those for the purpose of the record.

Exam. Taylor: Any objection?

Mr. Enoch: I think before you rule on that we ought to have the privilege of asking some questions about them. As I understand it they are simply marked for identification now.

The Witness: The most of that is in my direct testimony here if you want to cover it that way.

Exam. Taylor: They will be referred to as exhibits 45 to 48 to be received later.

(Exhibits 45 to 48, Witness Allen, marked for identification.)

By Mr. Root:

Q. Mr. Allen, will you state the various positions or offices that you hold with any of the parties to this proceeding?

A. Why, my position at the present time is president of the Co-operative Allied Grain Dealers Corporation of Morris, Illinois, secretary and treasurer of the Allied Barge Corporation and manager of the Farmers' Square Deal Grain Company of Morris, Illinois.

Q. You understand the issues involved in this proceeding?

A. I do.

Q. You, as a matter of fact, have heard all the testimony [fols. 1285-1287] offered so far?

A. Absolutely.

Q. Now, have you prepared a statement that you would like to make here, Mr. Allen?

A. I have.

Exam. Taylor: Before we proceed on that, off the record, please.

(Discussion outside the record.)

Exam. Taylor: At this time, gentlemen, we will adjourn until nine o'clock tomorrow morning.

(Whereupon, at 4:17 o'clock p. m., the hearing was adjourned until 9 o'clock a. m., Thursday, January 18, 1940.)

[fol. 1288]

Morrison Hotel,
Chicago, Illinois,
January 18, 1940.

Met pursuant to adjournment at 9:00 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances:

As heretofore noted, and the following additional:
Halsey McGovern and Willis Crane, Washington, D. C., U. S. Department of Agriculture.

Proceedings

Exam. Taylor: All right, gentlemen, come to order, please. Gentlemen, due to the weather conditions, being registered anywhere from 9 to 12 below zero, and from the appearance of the parties present and those absent, it appears that it would be well to take a twenty-minute recess, to give those parties a chance to come in.

(A twenty-minute recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. Proceed, Mr. Root.

Wilbur H. Allen, resumed:

Redirect examination.

By Mr. Root:

Q. You are the same Mr. Allen that was testifying when [fol. 1289] this matter was adjourned yesterday?

A. Yes, sir.

Q. Mr. Allen, have you prepared a statement you would like to make in this matter?

A. I have.

Q. Proceed to make your statement; and may I call your attention to the fact that the room is larger, and that you read it slowly.

A. The name Wilbur H. Allen; business address 829 North Liberty Street, Morris, Illinois.

Mr. Day: You gave us that last night and your connection with these three companies.

The Witness: That is right. 95 per cent of my time is put in as Manager of the Farmers' Square Deal Grain Company. For eight and a half years I have had full charge of the books, records and income tax reports of this corporation. The Farmers' Square Deal Grain Company was organized in 1909; having at this time one hundred and fifty two farmer stockholders and six hundred and twenty two farmer patrons. The Farmers' Square Deal Grain Company is a member stockholder of the Co-operative Allied Grain Dealers Corporation, of Morris, Illinois, and a stockholder of The Allied Barge Corporation. I would like to make a statement here to clear the records of something that was said by John Brennen in his testimony here at the previous hearing. That neither myself nor The Farmers' Square Deal Grain Company, nor the Co-operative Allied [fol. 1290] Grain Dealers Corporation, nor the Allied Barge Corporation have ever borrowed or at this time do not owe the firm of Lowell-Hoit and Company one dollar. Neither does the firm of Lowell-Hoit and Company own any stock in either one of the above-mentioned companies. The Farmers' Square Deal Grain Company owns two elevators. One is located at Morris on the Rock Island Railroad, back one mile from the river; the other one is at Saratoga, Illinois, which is seven miles north of Morris and use- to be serviced by the F. & I. U. Railroad, which has been discontinued in the last two years. Since that time the only outlet service for that house is by truck to the river. Morris is located 60 miles southwest of Chicago. Our company is friendly to the railroads and have shipped out over the Rock Island Railroad since January 1, 1939, 62 cars of grain and shipped in 30 cars of merchandise.

Mr. Day: I think you ought to be specific about which one of these companies you are talking about now, when you say our company.

The Witness: The Farmers' Square Deal Grain Company. Farmers are interested in the lowest possible freight rate on their grain, as the returns on their investment figures on the net profit. Farmers, not being able to set the price of his products, receives what is left after everybody else takes theirs. The farmer is certainly concerned about the rates from the primary market to the east. If the rate [fol. 1291] is reduced, the farmer gets a better price; if the rate is raised, the opposite occurs. Now, I think, personally, that the thing for the railroad and Chicago Board of

Trade to do is give the farmers all the assistance and help they can, rather than to make it as hard as possible for them. The only reason the farmers use the waterway for the shipment of their grain is because it is a saving to them. The Illinois River Valley is one of the natural geographic regions in the United States. Agricultural and industrial products can reach the great markets and trade routes of the United States and export to the entire world through the Illinois River artery of commerce. There is a natural unity of interest in the Illinois River Valley. Morris is located in this Valley. I wish here to introduce exhibit No. 45, which shows the comparative cost of grain shipments from 9½ cents, Illinois proportional rate points, 5 cents Lake points, a 3 cent plus barge point and direct trucking to Chicago. These figures were prepared by myself and taken from actual items of expense that pertain to our business bere at Morris, and I hereby certify that they are true and correct as far as I am able to determine.

Mr. Brown: At this point, Mr. Allen, so where it shows via 9½ cents IP rate to Chicago, that is representative of the station Morris, Illinois?

The Witness: Morris, Illinois; yes, sir.

By Mr. Brown:

Q. Those figures relate to corn?

[fol. 1292] A. Anything that is shipped on a 9½ cent rate.

Q. This 5-cent local rate is on corn only, isn't it?

A. I guess that is right.

Q. Would it be all right to say that these figures are on corn?

A. Yes, that is what we are talking about, mostly, I guess. The figures of this exhibit show that the farmers are receiving 2 69/100 cents per bushel more for their grain at the local market in Morris, Illinois, than they did before there was an elevator on the Illinois River, at Morris, Illinois. Figures show according to this exhibit that we pay our farmers 2 69/100 cents per bushel more than we would if we were shipping on the rail on the 9½ cent I. P. rate. Since January 1, 1939, our firm has shipped by the way of the Illinois Waterway, 868,235 bushels, at a saving of 2 69/100 cents per bushel. This means that we have paid to our farmers $23,355.52 more than they would have received had we been shipping by rail on the Illinois

Proportional rate. Last spring the Rock Island put into effect a 5 cent Lake rate into Chicago from Morris but it has no reshipping value and bids issued on it are one-half cent per bushel less than I. P. bids delivered Chicago. This rate will expire June 30, 1940. Whenever Chicago is full of corn at the local industries the bids will be based on I. P. billing and the corn will sell just that much less. All [fol. 1293] then the local grain dealers can do is to take it off the farmers' price. Barged grain going into Chicago without any Eastern billing will come in direct competition with this 5 cent Lake rate corn from all over the country and very soon the city of Chicago will be so full of corn without any billing behind it that the industries will lower their bids and then the elevator operators will buy the barged corn and 5 cents Lake rate corn at the same cost as the I. P. rate billing corn. This is what some of the commission men in Chicago would like to see, as the grain that comes in over the rails to the commission man nets him a full cent commission whereas barge moved grain only net him one-half cent per bushel commission. If we as local grain dealers in the town of Morris are forced back to the Old I. P. rate we cannot possibly compete with the trucks that run the highway and buy grain direct from the farmer and haul it direct from the farm to Chicago. Being only 60 miles Southwest of Chicago, grain is trucked in there for a total cost of 6½ cents per bushel while we will be forced to try to operate on a cost equal to the I. P. rate or a total cost of 9 8/100 cents per bushel. This we cannot do. I wish here to introduce exhibit No. 46, which shows the operating picture of the Farmers' Square Deal Grain Company, at Morris, Illinois, for a period of 24 years back. This statement and the income tax reports were prepared by myself and taken from the books and records of The Farmers' Square Deal Grain Company and [fol. 1294] hereby certify that they are true and correct as far as the records show. The I. P. freight rate from Morris to Chicago from January 8, 1914, until June 25, 1918, was 5 cents per hundredweight. From June 25, 1918, until August 26, 1926, our I. P. rate was 7 cents per hundredweight. During this period our company handled an average annual bushelage of 645,157 bushels of grain on which we made an annual profit of $1,945.91.

Record.

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 175

THE INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JUNE 24, 1942.

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By Mr. Root:

Q. That is net or gross profit?

A. That is net profit. That is what we paid income tax on. On August 26, 1926, the Illinois proportional rate was raised to 10 cents per hundredweight. On January 1, 1932, this rate was reduced to 9 cents per hundredweight.

By Exam. Taylor:

Q. What is that date, the reduction took place?

A. January 1, 1932. On March 28, 1938, this rate was again raised to 9½ cents per hundredweight, this being the rate in effect now. During this period from August 26, 1926, until the late fall of 1933 we shipped all of our grain over the railroad. From that time on we have shipped the most of our grain over the waterway. During this period from August 26, 1926, until January 1, 1934, we handled an average annual bushelage of 403,454 bushels, and ran at an average annual loss of $992.60.

By Mr. Root:

Q. That again is a net loss?

A. That is a net loss. These figures were all taken from [fol. 1295] the income tax reports. Beginning with January 1, 1934, to date we have shipped the most of our grain over the Illinois Waterway and have shipped an annual average of 531,170 bushels and made an annual average profit of $5,660.83. We have never sold any grain on the local rates, that I remember of.

By Mr. Day:

Q. Still speaking of The Farmers' Square Deal Company?

A. The Farmers' Square Deal Grain Company. This is the picture of The Farmers' Square Deal. Thus you can see that by shipping on the rail over a period of eight years and trying to meet competition, we were steadily going broke. Drawing on our surplus all the time and losing an annual average bushelage of 241,703 bushels. The Waterway saved us. Not only did it save us but it put close to $20,000 per year in the pockets of our own local farmers around Morris, Illinois. Large sums of money have been spent in erecting elevators on the river. The Farm

Credit Administration of Washington, D. C. owns the elevator at Morris which the Co-operative Allied Grain Dealers' Corporation now lease and operate. A new house costing $40,000 has been built at Seneca and operated by the Co-operative Allied Grain Dealers Corporation. So far, these river elevator operators have tried to protect the local grain dealers located on the rail by giving the local grain dealer the bid for grain and letting him handle the [fol. 1296] farmer rather than bidding the farmer direct. My first chart or exhibit 45 will show that for this service the local elevator is taking one cent per bushel. I wish here to introduce exhibit No. 47, which shows the costs of handling grain direct from the farm to the markets by five different modes of transportation and the savings made to the farmer as a whole, throughout the Illinois Valley. These figures were prepared by myself and taken from actual items of expense that pertain to our business here at Morris; this is The Farmers' Square Deal. And I hereby certify that they are true and correct as far as I am able to determine. Exhibit No. 47 shows that if an elevator on the river was bidding the farmer direct, his total expense from the farm to Chicago would be 5 63/100 cents per bushel. An elevator operator on a 5¢ lake rate point trying to compete would have expenses of 6 55/100 cents per bushel, and if we are forced back to the old I. P. 9½ cent rate an elevator operator will have expenses equal to 9 8/100 cents per bushel. While a truck hauling direct will have expenses amounting to 6 50/100 cents per bushel. Corn going in by truck and lake rates sell at least one-half cent per bushel less than I. P. grain. From our own operations of trucks and barges and rail shipments, we find that the cost per ton mile to Chicago from Morris as follows—this is the Farmers' Square Deal actual expenses that are charged against it. Repeating here, from our own operations of trucks and barges and rail shipments, we find [fol. 1297] that the cost per ton per mile to Chicago from Morris is as follows: By barge at 1¾ cents per bushel our cost per ton per mile is 1.03 cents, or 62⅓ cents per ton. Cost by rail on a 5-cent Lake rate is 1.66 cents per ton mile, or $1 per ton to Chicago. On the 9½ cent Illinois Proportional rate the cost per ton per mile is 3.16 cents, or $1.90 per ton to Chicago. Operating trucks for a distance of 210,000 miles, our books show that the cost per ton per mile was 2.8 cents.

Exam. Taylor: Is that per ton, or per bushel?
The Witness: Per bushel.
Mr. Root: That 2.8 cents—read the Examiner's question.

(Question read.)

The Witness: That is, your Honor per ton per mile; 2.8 cents per ton per mile. That figures out $1.57 per ton—or $1.57 per ton to Chicago, Illinois. These are all costs to us according to our books on corn handled at Morris.
Mr. Enoch: I do not understand that statement, when you say by barge at 1¾ cents per bushel our cost per on per mile is such-and-such a figure; I do not understand The Square Deal Company ships by barge.
The Witness: Just like we know that a 5-cent rate is on the railroad, we know that that is the rate they are using against us.
[fol. 1298] By Mr. Enoch:

Q. You say then that Square Deal Grain Company gets a barge rate of 1¾ cents a bushel?
A. No; we know that is what the rate is, which is just the same as we know what the 5 cent rate is.

Mr. Root: May we go off the record.
Exam. Taylor: Off the record.

(Discussion outside of the record.)

The Witness: Exhibit No. 48 shows the loss to the producer if he is denied the right to use the cheapest form of transportation offered him here in the Illinois Valley. As president of the Co-operative Allied Grain Corporation, I know that no elevator in the state of Illinois has been denied the right to sell his grain to or become a member of the Co-operative Allied Grain Dealers Corporation. By becoming a member he enjoys the benefit of the Co-operative profit at the end of the year. If not a member he gets the full market price daily just the same as members. Competition sets the margin of profit for each dealer. It is possible for the most of this grain to go down the river to St. Louis or New Orleans instead of Chicago. In times of surplus it is an advantage to other Illinois and Iowa rail shippers to have this river grain transported cheap enough so it will sell for export and get out of the way of high freight grain that could not compete with foreign grain. Soy beans [fol. 1299] are fast becoming a major crop in Illinois and

can only be shipped on the highest rail rate unless they go by water. Audited figures submitted each year at the Farmers' Grain Dealers Convention show that the elevators of the state of Illinois have larger surpluses and less bills payable than they did 10 years ago and are handling more volume of grain. The Chicago grain market has been losing grain for years to other markets such as Decatur, Peoria, and Indianapolis, because of the strict rules and regulations of the Chicago Board of Trade.

Exam. Taylor: Have you finished exhibit 48?
The Witness: Yes.

By Exam. Taylor:

Q. There are some figures on there I would like to have explained: at the top of the exhibit, where the chart shows the black squares applying; it is between the last two, in the white space, 7.05.

A. That is a typographical error there; and we marked out 7.13 and put in 7.05; and down below we have subtracted as 7.05, instead of 7.13. The black spaces here indicate the expense items pertaining to each item of expense. The white in there denotes the savings to the producer, if he——

Q. The basic price delivered at Chicago, that is per bushel?

A. That is per bushel.

Q. All the rest of the figures are bushel?

A. All the rest are bushel, taking the 55 cents as a base price in Chicago, and subtracting off the expenses, would [fol. 1300] indicate that we would be paying to the producer if he was delivering direct to the river elevator, no rail elevator connected into it, 49.37. If he was going by the local elevator that deals with the Allied, they would take off 6.38 cents and pay the farmer 48.62 cents.

Q. The rest is the same?

A. The rest is the same, yes, just itemizing expenses, except in this item of 7 and 7.05; I have entered into that as part of the expense the ½-cent a bushel that the corn sells at a discount, that I mentioned prior to this. And the loss to the producer down there, if he has to deliver in one of these ways, is indicated by the figures. If he has to deal with the elevator based on expenses of 9.8 cents, he loses 3.45. If he deals with the rail house that is operating on

the 5-cent lake rate, he loses 1.42. If he goes direct by truck from the farm to Chicago, he loses 1.37. If he goes by the local elevators that are delivering on the river, he still sacrifices ¾ of a cent for the sake of maintaining the local elevators in the community.

Mr. Enoch: May I ask a question: what is the significance now, direct river buying here first, is that 5.63 cents up there?

The Witness: That is right.

By Mr. Enoch:

What do you claim for that figure? That is on your exhibit 48.

[fol. 1301] A. That is on exhibit 45.

Q. I am referring to the figure on exhibit 48.

A. To get what it is made up of you will have to turn back to exhibit 45.

By Exam Taylor:

Q. The details of those figures are shown on exhibit 45?

A. Yes.

Mr. Day: I do not think so. That is in the third column of figures?

The Witness: No; that is on the next to the last one.

Exam. Taylor: That can wait for cross-examination. Go ahead.

The Witness: (Continuing) I would say the call rule out of Chicago is worth $75,000 per year to the A. E. Staley Manufacturing Company of Decatur, alone. The rule making the trimming charges on barge of ⅜ cents per bushel has cost our Co-operative Allied Grain Dealers Corporation between $17,000 and $18,000 this last year. This has to be taken from the farmers price. The Chicago firm buying the corn would allow this to us if permitted to do so. If the Commissionmen of the Chicago Board of Trade wanted to help the Chicago market and farmer in general they would ask that the call rule and the trimming rule be wrote off the books and give the few men who really do deal in the real honest to goodness corn and wheat a chance to buy grain in competition with these other markets. But [fol. 1302] no, the commission man who has no investment in the Chicago Board of Trade at all except his Board of

Trade membership and a deck chair, sometimes, wants his commission legislated right into his pocket. The country grain dealer has long looked upon some of these commission men as parasites. And I define parasite as a thing that lives off of you, and you cannot get rid of it.

Mr. Brown: When did you come to that conclusion yourself?

The Witness: Quite awhile ago.

By Mr. Brown:

Q. When?

A. Quite awhile ago.

Q. When you commenced shipping by barge?

A. No, I didn't.

Q. You still ship to Chicago? I object to such language as that.

Exam. Taylor: I think perhaps you could modify that somewhat.

The Witness: Well, it is out now; I am not going to recall it.

Exam. Taylor: Well, use some other term.

Mr. Brown: If you think they are unnecessary, it is all right to say so.

Exam. Taylor: Cannot you modify that, as a necessary evil?

[fol. 1303] The Witness: Maybe that is the term; I don't know; I hope so.

Mr. Brown: If he wants to call it a necessary——

Exam. Taylor: He has accepted the modification.

The Witness: Sure.

Exam. Taylor: Proceed.

The Witness: (Continuing) When corn on the Iowa prairies was selling for 9 cents per bushel, your Chicago commission man was taking his full cent per bushel commission. The real cash grain men on the Chicago Board of Trade do not have a chance when it comes to making rules and regulations. They are outnumbered 12 to 3 by the pit traders and commission men. Cash grain is just a front for the traders who run the Board of Trade. The ratio between cash grain and futures last year was fourteen million to seven billion and fifty million bushels——

By Exam. Taylor:

Q. You are still talking about corn?

A. I am talking about the whole movement of grain now that comes into the Chicago market. This, when boiled down, there is seven billion and fifty million bushels of futures sold.

Mr. Enoch: I am interested in your answer to the Examiner's question; are you speaking about corn or all grain?

The Witness: These figures here are for all grains that come into Chicago. Please be advised, Mr. Examiner, that Mr. Farlow or his State Association does not speak for our [fol. 1304] local elevator nor for the Co-operative Allied group either, who are satisfied with the way things have been in the past few years since we found a solution for our own problems and that is water. High transportation costs are the principal, if not the only reason why the economic development of the Mississippi and Illinois Valleys have fallen behind the rest of the country. The whole purpose of the Inland Waterway development is to remove this handicap of high transportation costs.

Exam. Taylor: Does that conclude your statement?

The Witness: Yes, sir.

Mr. Root: That is all I have, your Honor.

Exam. Taylor: Any questions by counsel for protestants? Cross-examine.

Cross-examination.

Exam. Taylor: Mr. Day? Mr. Enoch?

By Mr. Enoch:

Q. What is the name of your employe with Lowell-Hoit and Company?

A. Whom are you speaking about? I haven't anybody there.

Q. Have you got an employe with Lowell-Hoit and Company?

A. Personally, no; or no other way.

Q. Did you think I was talking about your own individual employe up there?

A. Well, you said your.

Q. First, let me ask you, have you got any idea about whom I am talking now?

[fol. 1305] A. You might be talking about me, you might be talking about the co-operative, or anybody.

Q. Does that question embarrass you?

A. Not a bit.

Q. Will you tell me the man's name, the one you think I mean.

A. I want to know whom you do mean.

Q. Have you got a man there?

A. I have no employe, no.

Q. Has any one of the six or eight companies you represent, a man with Lowell-Hoit and Company?

A. No, there is nobody on our payroll there.

Q. Was Mr. Robbins in error?

A. Mr. Robbins was in error in this way: that in the office of Lowell-Hoit and Company a gentleman friend of mine there, instead of me running up there every day and getting those weights, he would get them for us and take care of us; and I sent down there at the end of the year, no arrangement made, or anything, I sent him $250. He never considered it, or didn't know we were going to pay him.

Q. Do you do that out of your own pocket?

A. Out of the Barge Company pocket, the Allied Barge Corporation.

Q. How long has that arrangement been in effect?

A. Well, the barge company has been operating since—well, we sent the first barge, I think, on December 1, 1938.

[fol. 1306] Q. How long has the arrangement been in effect?

A. There never was any arrangement. He just rather took it on himself to do that, just merely as an accommodation. There wasn't any arrangement at all.

Q. How long has the accommodation been in effect?

A. Well, ever since the Barge Company started.

Q. How many checks of $250 have you paid?

A. Just the one.

Q. Is another one due here shortly?

A. No.

Q. Did you give the name of this man?

A. No, I did not.

Q. Will you?

A. Well, I don't know as it is necessary.

Q. All right; did he formerly live in Morris?

A. No.

Q. Is there a secret about this?
A. No.

Mr. Root: Tell him who it is, Mr. Allen.
The Witness: Well, is it necessary?
Mr. Enoch: No, I don't ask it. Did he formerly live in Morris?
The Witness: No, he never did, that I know of.

By Mr. Enoch:

Q. By whom was he employed, that he had this with?
[fol. 1307] A. By the same people that employ him now.
Q. Who is that?
A. Lowell-Hoit and Company.
Q. What is the business of Lowell-Hoit and Company?
A. They are a commission firm in Chicago.
Q. Does any one of your companies have an account with him?
A. Well, Mr. Robbins with the Co-operative does quite a little business with him; and through The Farmers Square Deal Grain Company we do quite a little business with them.
Q. Do you have an account with them?
A. Well, there is no other account any more than if we should just happen to send a load of oats, or beans, or something in there, we draw a draft on them with the bill of lading attached; and as soon as the car is accounted for, that check comes back and the account is closed.
Q. Does any one of the companies that you represent hedge in the Chicago market?
A. Yes, sometimes.
Q. Do you do that extensively?
A. Never, except just maybe a few oats at harvest time, is about all.
Q. Do they handle your hedging account?
A. Most always, yes.
Q. Is the freight or barge charge physically paid in Chicago to these barge lines by any of your companies that use them.
[fol. 1308] A. I don't understand your question.
Q. Does this man that you do not name in Chicago, that represents you, have anything to do with the payment of charges for the use of barges, or towing?

A. Well, he makes up the freight bills, and gets a check that is made out to the Allied Barge Corporation, and mails it to us.

Q. Where is that made out?

A. In the office of Lowell-Hoit & Company.

Q. Does he have authority to sign your name?

A. Yes, sir.

Q. And he does sign your name to those checks?

A. Not the checks, no; my name is not on the checks.

Q. You are President of the Co-operative Grain Dealers Association?

A. Yes, sir.

Q. How are those charges handled, then?

A. Well, I think you got the cart before the horse. They are paying us, instead of——

Q. You straighten me out.

A. We are collecting the freight up there, instead of us paying them.

Q. I am talking about the shipper; where does he get his money, where does he pay his money to the barge line—The Allied Grain Corporation; is that done in Chicago, or at Morris?

[fol. 1309] A. That is done in Chicago. The man that buys a barge of corn takes out the freight, whatever you call it, and accepts the receipt for it, and the check is made out to the Allied Barge Corporation and mailed to Morris to the Allied Barge Corporation.

Q. That is all done in Chicago?

A. That is all done in Chicago.

Q. And in the office of Lowell-Hoit & Company?

A. Yes.

Q. Now, what other duties does this man have there, as far as any one of your companies are concerned?

A. It is quite convenient at times to have somebody there that will check at the elevators by telephone, to see which barge is empty, or when it is going out; or where the tow boat is, or something like that. If we want to know where 744 is, we telephone up and ask him to scout around and ask whether it has left Chicago.

By Exam. Taylor:

Q. That is the number of the barge?

A. He will find where that barge is, and telephone back and let us know.

Q. Have you got a private wire from Morris?
A. No.
Q. To Lowell-Hoit & Company?
A. No.
Q. Are you familiar with this document to which reference was made yesterday, exhibit 32, purporting to be a document surrendered here in Chicago by an outbound [fol. 1310] shipper in order to engage the proportional rate east of Chicago?
A. I am.
Q. That document purports to have your name on it; do you recall about that.

Exam. Taylor: Just for his convenience——
The Witness: You asked for the original yesterday; I have got some of them here, a couple of them.
Exam. Taylor: Here is the one that was introduced in the record. I am showing you the original that was introduced in the record as exhibit No. 32.
Mr. Root: We have copies of the original if you care to have them.
Exam. Taylor: You mean the original blank.
Mr. Root: Original blank. Oh, no, just a blank form.

By Mr. Enoch:

Q. Was the original of that document signed by you actually, or this gentleman to whom reference has been made, that is located in Lowell-Hoit & Company's office?
A. I presume that was signed by him.
Q. He has authority to sign?
A. Yes, he always puts my name and his initial behind it.
Q. He is the one that knows whether or not the charges for the transportation service are paid, isn't he?
A. Yes.

Mr. Root: You mean in the first instance—he is the one that collects the draft and forwards it to Mr. Allen. He [fol. 1311] also pays the barge line and receipts for it when the draft is delivered to him.
The Witness: Yes.

By Mr. Brown:

Q. If you are not willing to give the name of this particular man located with Lowell-Hoit & Company in Chicago, and who does you this particular service, will you state

whether or not that particular man is a member of the Chicago Board of Trade?

A. I don't know.

Q. Do I understand that he is employed solely by Lowell-Hoit & Company, with the exception of the services he does for you?

A. Well, I don't know that either; I don't know what other connections he might have.

Mr. Brown: I think we will have to press for the name of the man, in view of this strong condemnation of the Chicago Board of Receivers, and without any——

Mr. Root: If your Honor please, I fail to see any connection between the so-called condemnation Mr. Brown refers to and the man in Chicago whom Mr. Allen has authorized to sign his name.

Mr. Brown: And do clerical work, valuable services, no doubt.

Exam. Taylor: If he refuses to give his name, you cannot force it. The record will show it.

Mr. Brown: All right.

[fol. 1312] Mr. Day: We can force it, though, if we want.

By Mr. Enoch:

Q. Mr. Allen, this document now, exhibit No. 32—and I am speaking of the original; I want to be sure that its preparation was by this gentleman about which there has been some discussion in the office of Lowell-Hoit and Company in Chicago; that is right, isn't it?

A. That is right, yes.

Q. And it is prepared by him as your agent?

A. Well, now, when you say prepared by him; I don't know whether it is prepared by him or a stenographer.

Q. His direction, in the office of Lowell-Hoit and Company?

A. It is just prepared in the office there; and you could not have everybody looking after it, there has got to be somebody in particular. To tell you the truth about it, I didn't even know it had to be done when we started doing that; and the next thing I knew he was typing them out and sending them down; and then we had these printed.

Q. Made out as your agent?

A. Yes; that is, I don't know; I wouldn't say he is an agent, he just does it, that is all.

Q. Well, it has been going on for over a year, hasn't it?

A. Yes, ever since he——

Q. You have not objected to his doing it?

A. No. If he didn't do it, I would have to drive to Chicago every time. So it just saves me that trouble; that is all.

[fol. 1313] Q. You can well afford to give him a little Christmas present of $250?

A. Well, that is what I thought. He didn't even know it was coming, until I sent it to him.

Q. Exhibit 45, your statement in connection with that exhibit, as I understand is, that there is a certain saving to the farmer; and if so, that there is that saving because there is a difference in the cost of shipping via these different methods of transportation to Chicago?

A. That is right.

Q. And you assume that because one method of transportation costs less than another, that that is the saving to the famer?

A. That is right.

Q. Now, does that go through all of these exhibits?

A. Yes.

Q. You don't tell us how much you paid these farmers down here for grain, do you?

A. I can pick you out one man, if you want to, and tell you what I paid him. But your price takes care of that.

Q. If you would pick one out at the other end of the scale, I would be willing to have you do it; if you know what the average price paid by you for grain was per month, or any other period.

A. No.

Q. I mean, it is easily determined in the record.

[fol. 1314] A. The only way you could get an average is taking everything you handled, and the price you paid by the bushel, and that gives you the average; but I never went to that trouble.

Q. Do it by the week or month.

A. We don't take any average that way.

Q. You could?

A. Oh, you could.

Q. That would furnish some means of accurately determining how much the farmer gets for grain in your territory, so that we can can compare it with what farmers in other territories get.

A. I can show you one definite case, if you want it, right on the records here last month—Paul Hatcher.

Q. Any way, you have not done it for the general operations of the Co-operative Allied Grain Dealers Corporation?

A. No; these exhibits all pertain entirely to just as we function with the Farmers Square Deal. Mr. Robbins runs the business of the Allied, and I run the business of the Farmers Square Deal.

Q. Have you personally any stock in the Allied Barge Corporation?

A. Yes, sir.

Q. Have you personally any stock in the Farmers' Co-operative Grain Corporation?

A. We have got no such name as that.

Q. Oh, you are going to get technical?

[fol. 1315] A. Well, I want to know which one you are speaking about.

Q. Co-operative Allied Grain Dealers Corporation.

A. Yes, sir.

Q. You personally own stock in the Co-operative Allied Grain Dealers Corporation?

A. Yes, sir; 10 shares.

Q. Do any members of your family, are any members of your family stockholders in either one of the corporations?

A. My wife has 30 shares in the Barge Corporation.

By Exam. Taylor:

Q. The par par value of that is $100 a share?

A. That is what we paid for it; yes, sir.

Q. You did pay $100 a share?

A. Yes, sir; sold 80 acres of land to do it.

By Mr. Enoch:

Q. When you said in your statement that there was $20,000 put into the pockets of the farmers around Morris, you were basing that conclusion upon this difference in the transportation costs, solely were you not?

A. Yes, sir.

Q. How many farmers did you have in mind then?

A. Well, I wouldn't know. That was the bushels that I referred to. But I wouldn't know how many farmers it pertained to.

Q. Well, if there were 20,000 farmers, it wouldn't be so much; and if there were only one, it would be quite a lot?

A. Well, I wouldn't know on that.

By Exam. Taylor:

Q. Can you approximate it?

[fol. 1316] A. Wait until I look back here and find what I said. I said here since January 1, 1939, our firm shipped by way of the Illinois Waterways 868,235 bushels, at a saving 2.69 cents per bushel. This means that we have paid to our farmers $23,355.52 more than they would have received had we been shipping by rail on the Illinois Proportional rate. Well, now, whatever farmers were involved in that 868,000 would be the people that profited by that.

Q. And you cannot approximate it?

A. Well, that was nothing more than I might say this: we have a grain book there that has 200 sheets in it; and with a year's business of that kind, we just about fill that book. And we allow around two names to the page, probably; about 400 farmers.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. Well, there are names of others than farmers in that book, or not?

A. They would have to be either actual farmers or landlord farmers, one of the two.

Q. Wouldn't there be elevator people, or grain dealers?

A. No, we do not have anything to do with grain dealers, this Farmers' Square Deal.

Q. How long has this Farmers' Square Deal Corporation been in existence?

A. Thirty years,—thirty-one years.

[fol. 1317] Q. And on January 8th, 1914, what was it capitalized for?

A. What date was that?

Q. January 8th, 1914, which is the first date you referred to in your testimony.

A. Well, wouldn't say positive, but I think at that time there was 17,500 dollars worth of stock out.

By Mr. Root:

Q. Issued stock?
A. Issued stock.

By Mr. Day:

Q. And what is the present capitalization?
A. $17,100.

By Mr. Root:

Q. And that again is issued stock?
A. That is issued stock.

By Mr. Day:

Q. Do those figures represent the worth of the company?
A. No.
Q. Will you give the worth on January 8, 1914, and at the present time?
A. Well, I don't know as I could do that; I don't have the books here with me.
Q. Well, it has increased enormously in that period, has it not?
A. No, not a lot.
Q. Could you approximate it?
A. Well, I think—now, I am not making this as a positive statement, but I think in 1915 they probably had a sur-[fol. 1318] plus of around $20,000; and I think the surplus now is around $27,000.
Q. Does that include all of the investments the company has?
A. All investments.
Q. All assets?
A. Well, that and the capital stock.
Q. These profits that you show, or the losses,—the profits that you show for various years were distributed to the members, were they, or the stockholders?
A. Well, it is a stock company; and there have been dividends paid out of it during some years; not all years.
Q. Can you tell us what the barge route is from Morris and Seneca to the elevators to which you ship grain in Chicago?
A. Well, it is just up the river; I have never been up there; I don't know.

Q. Does this barge route run out on Lake Michigan?
A. Well, you couldn't prove it by me; I don't know.
Q. Are you connected with the Allied Barge Line?
A. Sure.
Q. But you have no familiarity at all with its operations?
A. Sure, with the operations; but not with the river; because I never went up it.
Q. Well, I am wondering how your barges get from Morris or Seneca to these elevators in South Chicago to which grain, as I understand, is customarily shipped?
A. Well, they leave going east out of Morris and go into [fol. 1319] South Chicago through what they call the Sag.
Q. It is taken through the Sag Channel, is it?
A. Taken through the Sag Channel.
Q. As I understand it, you used an arbitrary distance of 60 miles for barge, truck or rail?
A. Yes.
Q. To these elevators?
A. That is right.
Q. You have no idea, however, I think you said, as to what the actual mileage is for either method of transportation?
A. Well, just casually; we have always called it 60 miles until we hit the suburbs of Chicago.
Q. That is until you hit the Western Suburbs?
A. No, I always come in on what we call the Southwest Highway.
Q. Now, you are talking about the truck routes?
A. That is the truck route; we come in on the Southwest Highway.
Q. That is No. 7?
A. I believe so. And when we hit around in 95th Street and up in there, those suburbs, we figure we are in Chicago.
Q. And when you get to 95th and you say Western Avenue, you figure you are in Chicago; and your speedometer would show 60 miles?
A. I think so, approximately.
Q. And do you know how far you are from downtown [fol. 1320] district of Chicago, or from the South Chicago elevators when you are at 95th and Western?
A. Well, I would say just offhand around somewheres in the neighborhood of ten miles, either way.
Q. That is just a guess on your part?

A. That is just a guess.

Q. You don't know that street numbers in Chicago run 800 to the mile?

Mr. Root: North and South or east and west?

Mr. Day: 95th street is out south.

Mr. Root: You said street number; there is a difference, as I understand. The ones going west are 50.

Mr. Day: From 95th you are going north, where the numbers ordinarily run 800 to the mile; and 1600 east and west. And you do know that Western Avenue is some miles west of either State Street or west of South Chicago elevators, do you not?

The Witness: Yes, I know that.

By Mr. Day:

Q. Now, then, as I understand it, you have no information of the distances via barge to South Chicago?

A. Well, nothing more than it just angles up across the country there; just about—generally, in the same direction. That is about all, you know.

Q. Of course, the barges have to stay in the channel, do they not?

A. Sure.

[fol. 1321] Mr. Root: There is a man sitting right over here, a barge man, who can tell you just what that is, if you want to get it correct.

Mr. Day: That is all right; but this witness, of course, testified as to mileages, to earnings per mile by barge, truck, and rail. If some other witness has the information, why, of course, I won't press it with Mr. Allen; because all I want to do is get the facts here. Having put in the facts here, it seemed that Mr. Allen was the one to inquire of about them.

Mr. Root: In fact, he has stated he assumed it was 60 miles. I think it will be shown it does not vary more than three or four miles.

Mr. Day: I don't like that statement; I have had counsel say the value of bottles was a thousand dollars a car, and the Commission used that in a decision.

Exam. Taylor: That statement is not a sworn statement; the record will so show.

By Mr. Day:

Q. Now you refer to an increase on August 26, 1926,—an increase in the rate.

The Witness: Yes.

Q. Wasn't that date intended to be August 26, 1920?

A. I don't think so.

Q. You don't think so—well, who gave you this information about these rate changes?

A. That is a matter of public record.

[fol. 1322] Q. You haven't any objection to telling us where you got the information, have you?

A. I got that from a man by the name of Moore, in Mendota.

Q. And he told you that this 40 per cent increase in the rates took effect August 26th, 1936, and that the 10 per cent reduction in rates took effect——

A. January 1.

Q. January 1, 1932? You don't know that that, as a matter of fact, should have been 1922?

A. It came out of the office of the Chicago Board of Trade here.

Q. You were paying rates during all of this period June 1, 1920 and 1932, were you not?

A. I presume so.

Q. Well, you know there were no such changes there as that, don't you?

A. These are the figures I got; and that is the figures I used.

Q. But you do not use them with regard to what you actually paid during that period; you used them because somebody gave them to you and told you they were the rates on those dates; isn't that the fact?

A. Well, they were got officially. If the man in the Board of Trade office does not give out the right information, there is something wrong on that end.

Q. You mean the Chicago Board of Trade?

[fol. 1323] A. Mr. Brown's office in Mendota.

Q. I thought you said you got that from Mendota?

A. I did; he got them.

Q. He got them from Mr. Brown's office?

Mr. Brown: I will have to ask reference be given to our rate books.

By Mr. Day:

Q. You say you hauled by truck, barge and to some extent rail to Chicago?

A. You said trucks to Chicago?

Q. Yes.

A. No; we never hauled but one load in here to Chicago, in our lives.

Q. Weren't the truck costs that you testified to, and which are contained in your exhibit 45 and other exhibits, based on your actual trucking experience?

A. Sure; but I didn't say to Chicago.

Q. Oh, these are not actual truck——

A. It says operating trucks for a distance of 210,000 miles, our books show that the cost per ton mile was 2.8 cents per hundred.

Q. And that is how you arrived at this truck cost to Chicago, is it?

A. I said that would figure out on that basis, still; using 60 miles would figure out $1.57 a ton.

Q. That is how you arrive at this five cent charge for [fol. 1324] trucking shown on your exhibit 45?

A. I don't understand the question.

Q. On exhibit 45, in the fourth column of figures, you show freight to Chicago on corn via truck direct to Chicago, 5 cents?

A. Yes.

Q. Tell us how you got that figure?

A. Well, there is trucking concerns that operate down in our territory there; and that is what they charge the farmer for trucking the corn direct from his farm into South Chicago.

Q. So you did not base the cost on what your trucking cost for 200,000 miles was then?

A. That is just our truck operations; it would not make any difference whether they ran around Morris, or on the road to Chicago; it is all the same thing.

Q. Then your truck figures here are based on what certain truckers charge certain farms from farms in the vicinity of Morris to Chicago; is that right, or not?

A. Say it again.

Exam. Taylor: Read the question.

(Question read.)

Exam. Taylor: Now, Mr. Allen, if you can answer the question yes or no; and then if you want to explain it, explain it later.

The Witness: I will say yes.

[fol. 1325] By Mr. Day:

Q. Then——

A. Now, wait until I explain this: this 5 cents a bushel here comes out on the card that is sent over the territory by E. R. Bacon's man that operate- there in Morris as a buyer; and when he bids for so much, he says, 5 cents less for trucking to Chicago.

Q. That is in his bid?

A. That is in his bid.

Q. That is so far as your knowledge of trucking by Bacon goes?

A. Yes.

Q. If he pays only 2 cents a bushel, you wouldn't know anything about it?

A. No.

Q. And the fact that you truck 200,000 bushels of grain during some given period did not enter into these figures of yours at all, did they?

A. Not on exhibit 45, no.

Q. Did they elsewhere in your exhibits, or in your testimony?

A. They did in my testimony, but not in my exhibits.

Q. Was this estimated cost of the truck per ton mile based on your own truck operation?

A. That is not estimated; that is actual figures.

Q. And how does that compare with the figure you show on exhibit 45, to Chicago by truck; did you attempt to match up your cost with this so-called trucking cost?

[fol. 1326] A. No, I did not; but we have——

Q. What are the capacities——

Mr. Root: Pardon me; he was just making a statement.

The Witness: I was just going to explain that our fleet of trucks down there, that we carry a cost account for each individual truck, as to what the cost of gas and oil and depreciation, and everything that would happen to that truck, accident or anything else, repairs, cost of the driver; all that is charged to each individual truck.

By Mr. Day:

Q. How many trucks do you own?

A. Three.

Q. Do you operate three also?

A. I beg pardon?

Q. Do you operate more than three, or just the three that you own?

A. Well, for about six months this summer we had two extras hired on a weekly basis.

Q. So that for awhile you were operating five trucks?

A. Yes; but these figures here, the 210,000 miles, when we do run those trucks 70,000 miles, the three of them, it makes 210,000 miles that they traveled altogether; that was the chargeup to them on the books. And that would take in everything that they had actually cost us.

Q. Which corporation owns those trucks?

A. The Farmers' Square Deal.

[fol. 1327] Q. And where do they operate?

A. Oh, in the locality of Morris, around there. We make a trip to Chicago once in awhile, after a load of feed; or to Peoria and Bloomington; but most of the times, just right in the vicinity of Morris there, within a radius——

Q. Do they go to Decatur?

A. No, we have never been to Decatur.

Q. Rockford?

A. No.

Q. Any other points?

A. Well, Joliet, and the towns in between there; but that is just occasionally——

Q. What would they pick up in Joliet?

Mr. Root: Let the man finish his statement, please.

The Witness: Well, I don't know as we ever went over there after anything. We have sent them there to be repaired, and things like that. That is where we had them serviced.

By Mr. Day:

Q. Does the Farmers' Square Deal also handle coal, lumber?

A. No lumber.

Q. Fertilizer?

A. Yes.

Q. Drain tile?

A. No.

Q. What other things do they handle?

[fol. 1328] A. Well, we handle coal, feed, seeds, twine, fertilizer, washing machines.

Mr. Root: Fencing?

The Witness: Fencing, yes; any number of items that the farmer needs during the seasons of his operations.

By Mr. Day:

Q. And these trucks are assigned to handling those commodities, for the most part?

A. They just do everything that is necessary to the business down there to keep it going.

Q. Do you know to what extent they would haul grain?

A. Do you mean of the amount of time put in on that?

Q. Well, that would be one way of getting at it.

A. Well, I couldn't allot the time particularly; just whatever it takes in the operations, taking care of the grain part of it.

Q. But there is very slight call for use of these trucks in grain hauling, isn't there?

A. I don't know; that is our major operation.

Q. Oh, the major use of these trucks is to haul grain?

A. Is hauling grain; these others are just side lines.

Q. So that it would be fair to say that more than half their time was devoted to hauling grain?

A. I would say three-fourths of it.

Q. And in that hauling, where do they operate?

A. Well, in a radius of 15, 20 miles out of Morris, to whatever individual farm we would have to get it.

[fol. 1329] Q. They go to the farms?

A. To the farm, and then back to town.

Q. Now, what kind of trucks are these?

A. Dodge trucks.

Q. What size, ton and a half?

A. They call them ton and a half trucks; one of them is what we call a straight job, and two of them has a trailer attached behind.

Mr. Root: What class licenses?

The Witness: We have an X license which costs us $250 each for the trailer trucks; and an S license for the straight truck, which costs $75.

By Mr. Day:

Q. Is this trailer a closed job?

A. The grain box is open at the top.

Q. On the trailer?

A. On the trailer; well, in all of them, as far as that is concerned.

Q. Let us take the trailer first.

A. The trailer is open at the top, and closed all the way around.

Q. And it is suitable for handling grain, is it?

A. It is built for that purpose.

Q. What is its capacity for handling grain, for grain hauling?

A. Well, we handle just about 400 bushels on a load.

Q. 400 bushels of corn?

A. 400 bushels of corn.

[fol. 1330] Q. The other two straight jobs, what is their capacity?

A. No, there *is* two trailers, and one straight job.

Q. Is the capacity of both trailers 400 bushels?

A. Just exactly the same.

Q. They are identical trucks?

A. Identi-al trucks.

Q. Now, the straight job?

A. That is what we call a 5-ton; we haul 5 ton on it. That is what our license calls for.

Q. Is that a closed-in truck, too?

A. It is open at the top, just like the others.

Q. It is not a panel job?

A. Oh, no.

Q. And it is suitable for hauling grain?

A. For hauling grain.

Q. What is the capacity of this straight job?

A. Five ton; that is what we haul on it. It is what we call a ton and a half truck, but we——

Q. Do you mean by that that it will haul 10,000 pounds of corn?

A. 10,000 pounds of grain.

Q. Something less than 200 bushels?

A. Yes, on that.

By Exam. Taylor:

Q. Before you leave that, you said 400 bushels would be about 22,400 pounds?

[fol. 1331] A. That is right, approximate.

By Mr. Day:

Q. Do these trucks do any hauling for other people?

A. Yes, sometimes.

Q. You hire them out?

A. We have in time; not so much in the last year, because our own business has practically taken up their entire time. But then we have hauled for others.

Q. You would move household goods, for instance, if a person wanted to?

A. No, no.

Q. You do not do general hauling of that kind?

A. Grain and feeds, and seeds; and things like that, most generally.

Q. You stated that there was a difference in the commission charged on grain when it came in by barge and by rail; I think you said one-half cent in the one case, and one cent in the other?

A. That is right.

Q. Will you explain the reason for that difference?

A. I don't know the reason, but that is the rules from the Board of Trade.

Q. Now, you also referred in your testimony to the fact that at the present time elevators have much larger surplusses than they did ten years ago, and are handling more volume of grain?

[fol. 1332] A. That is right.

Q. Isn't that due to the fact that in the last two years we have had an unprecedented production of corn in Illinois?

A. Well, it might be.

Q. Well, you know we had some drought years just before 1938 and 1939, don't you?

A. Yes; but we did not have a drought ten years ago.

Q. Your comparison, then was with 1929, was it,—1929 with 1939?

A. That is right.

Q. And you say that there was a much larger surplus of grain in these elevators in Illinois, in the vicinity of Morris, than there was ten years ago; is that your testimony?

Mr. Root: Read the question again, please.

(Question read by the reporter.)

The Witness: I didn't say in Morris; I will read you what I said.

By Mr. Day:

Q. I said in the vicinity of Morris; I am trying to get at this territory tributary to your elevator.

Mr. Root: I don't understand that question.

The Witness: I don't know what is going on in the other elevators around Morris.

By Mr. Day:

Q. Well, your testimony was the elevators of the state of Illinois?

A. Sure, I said here audited figures submitted each year [fol. 1333] at the Farmers' Grain Dealers Convention show that the elevators of the state of Illinois have larger surplusses and less bills payable than they did ten years ago.

Q. Now, what do those figures actually show, 1929 versus 1939?

A. Wait a minute; they are 1930 to 1938.

Mr. Root: Wait a minute——

Mr. Day: When I asked him a few minutes ago about these intervening years, he said 10 years ago, and he made it very definite. Now, he says he wants to back up and get in this period in between——

Mr. Root: Pardon me;——

Mr. Day: The Witness said that he was not talking about this period in the last ten years, that he was comparing now with ten years ago; and that is the comparison I want him to make.

Mr. Root: May I say something, Mr. Examiner?

Exam. Taylor: All right.

Mr. Day: I think you can take him on redirect.

Mr. Belnap: Isn't Mr. Day talking about surplusses of grain, and isn't the witness talking about——

Mr. Day: May this be off the record?

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: On the record: so long as Mr. Day sticks to the witness' direct testimony, he is within his rights; and [fol. 1334] his cross-examination is proper. If anything that he brings out is different from what you think it is, then on redirect you can straighten the record out on that point. Read Mr. Day's last question.

(Question read, together with answer.)

Exam. Taylor: Now, there he has modified his previous statement.

By Mr. Day:

Q. You want to change that from 1938 to a comparison with 1930?

A. Figuring back ten years; this is 1940, and these figures from 1930, that would be ten years.

Q. Inasmuch as 1940 is only 18 days old, I do not presume you have much in 1940?

A. These figures were given at the conventions in 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, and 1938.

Q. That is what you meant when you said that the surplusses were larger now than they were ten years ago?

A. Yes; I was figuring from 1930 to 1940.

Mr. Root: What is that, again.

The Witness: I was figuring in my own mind from 1940 back to 1930, a ten-year period.

By Mr. Day:

Q. When was this Grain Dealers' Convention at which you got the 1940 figures?

A. I haven't got the 1940 figures.

Exam. Taylor: He said he had them in his mind.

[fol. 1335] Mr. Day: His testimony was audited figures.

Exam. Taylor: Mr. Day, he has straightened that out.

Mr. Day: Now, he says he got figures for 1940.

Exam. Taylor: No, he said he figured 1940 was ten years after 1930, in his head.

By Mr. Day:

Q. Well, what you have got is a comparison between 1938 and 1930?

A. That is right.

Q. Based on figures submitted at the Farmers' Grain Dealers' Convention?

A. That is right.

Q. When was that convention?

A. It is held in February each year.

Q. So that the figures you got for 1938 were obtained in February, 1939, is that right?

A. That is right.

Q. Is that right?

A. The last one is right.

Q. And that showed what surplus for the year 1938?

A. Now, this report, the way the auditor gives it there, he said fifty reports was broke down into averages, to show authentic conclusions as to the average result of operations and as to the average financial conditions existing amongst the farmer elevators of this state, shown in the diagraphs published by Harry Heiser, Public Accountant of 2005 East [fol. 1336] Taylor Street, Bloomington, Illinois. And the surplusses as he gives them here in 1930, the average surplus of fifty elevators was $12,630; in 1931, it was $11,048;——

Q. You want to give them for all these years, do you?

A. Yes.

Q. That is all right with me, but I didn't ask for them?

A. And in 1932 $6,800; in 1933 was $7,521; in 1934 was $9,513; in 1935 was $9,971; in 1936 was $17,070; in 1937 was $17,469; and in 1938 was $18,347.

Q. Now, does that mean that the average these fifty elevators had in cash were the amounts that you have stated?

A. Not in cash; that is surplus shown on their books.

Q. And that corresponds to what you gave as your surplus awhile ago?

A. Yes; it might be tied up in property, but then they are our surplus on the books; plus the capital stock, equals net worth.

Q. Yours is around $27,000 at the present time, I think you said?

A. $27,000, yes. Now, the bills payable——

Q. Now, is that what you meant by surplusses; you mean amounts in money?

A. I said that their surplusses were larger, and that their bills payable were less.

Q. What I was particularly interested in was the volume of grain.

[fol. 1337] A. Well, I will give you that, when I give you this feature: if their surplusses were larger and their bills payable were larger, it might not mean anything; but if their surplusses are larger and their bills payable are smaller, it would show that they are progressing and making headway. Take back in 1930, notes payable was $12,940; in 1931, it was $9,580; in 1932, was $8,190; in 1933, was $7,229; in 1934, was $6,007; in 1935, was $5,571; in 1936, was $4,343; in 1937, was $4,685; and in 1938, was $5,945. Now, their average bushel turnover in 1930 was $209,480; in 1931, was $182,400; in 1932, was $261,700;——

Q. That is in money?

A. No; wait a minute. Did I say dollars?

Q. Yes.

A. You better make that, that is bushels, I am talking about,—209,480 bushels.

By Exam. Taylor:

Q. That is 1930?

A. That is 1930.

Mr. Root: Give the year and the bushels.

The Witness: 1930, is 209,480 bushels; 1931, is 182,400 bushels; 1932 is 261,700 bushels; 1933, is 254,195 bushels; 1934 was 236,821 bushels; 1933, was 208,744 bushels; 1936 was 303,157 bushels; 1937, was 262,138 bushels; and 1938, was 440,084 bushels.

By Mr. Day:

Q. Now, do you have any information as to the average [fol. 1338] price of corn during those years?

A. No, I do not.

Q. The average price in 1939 was very low, was it not?

A. In 1939 was, I think, fluctuated from about 48 cents—maybe was high at the local elevator—down to about 33 cents.

Q. And in these intervening years the price of corn on occasions had been over a dollar, hadn't it?

A. Well, if I remember right, I think in 1935 maybe, or 1934, it was up as high as $1.30.

By Exam. Taylor:

Q. Well, that price that you gave there is the market price, wasn't it,—not the price to the farmer?

A. That is the price to the farmer; yes, sir.

Q. It is?

A. Yes; but that 1935 was the effect of the drought figure.

Mr. Root: What was that figure you mentioned?

The Witness: $1.30.

Mr. Root: As the high figure?

The Witness: I think about the high; that probably was on white corn, too.

By Mr. Day:

Q. Wouldn't you say that the average price of corn during these eight years was considerably in excess of the present price?

A. Well, I wouldn't remember; no; no, I wouldn't say so down around 1932. Corn then was——

Q. I didn't mean that it was lower than the lowest figure [fol. 1339] in that period; I meant the average.

A. I guess we all remember that low price.

Q. So that the fluctuation in the price paid the farmer for corn did run in excess of a dollar a bushel, did it not?

A. Did you say the average, or the fluctuation?

Q. Fluctuation.

Mr. Root: Over what period?

Mr. Day: I am still talking about the eight-year period referred to by the witness.

The Witness: Just that one year, is the only year that I remember of that it was above a dollar.

By Mr. Day:

Q. But in that one year, which is included eight, the range was from 33 to about $1.35 or $1.36?

A. No, in that eight years you still can have 14-cent corn in there.

Q. So that the range was much more than a dollar, then?

A. No, it was much less than 33 cents.

Q. Well, the range was from 14 cents to about $1.36, wasn't it?

A. No, about $1.30.

Q. $1.30?
A. Yes.

Exam. Taylor: Well, the figures speak for themselves.

By Mr. Day:

Q. What wages do you pay your truck drivers?
A. Well, under this new wage and hour law we pay them 50 cents an hour for 42 hours, and 75 cents an hour for overtime.
[fol. 1340] Q. And what had you paid prior to the taking effect of this new law?
A. 50 cents an hour straight.
Q. For how many hours a week?
A. Just whatever they put in, with a guarantee of $20 a week.

Mr. Day: That is all.
Exam. Taylor: Mr. Cole?

By Mr. Cole:

Q. Mr. Allen, what barge companies are there that you have any connection with whatsoever?
A. Well—you mean at the present time, or the past?
Q. Well, in order to start with a base period, what barge companies are there that you at any time since you were born have had any connection with whatsoever, in the smallest or largest possible detail? I will get you to answer my questions, Mr.——
A. Well, I guess about the only barge connection ever I had was at the time we bought these barges, the Barry Barge Line, when Mr. Barry finished out his contract of 30 days. And then we made a contract with Mr. Mechling, of the A. L. Mechling.

Mr. Root: Whom do you mean by we—we made a contract?
The Witness: The Allied Barge Corporation.

By Mr. Cole:

Q. Have you finished with the statement of all that you have had any contact with?
A. That is all I have had any contact with.

Q. During the time from December 1, 1938, at which time you said that the first barge moved, what company or what barge line or what barge name was it that moved the first [fol. 1341] barge which you referred to as having moved on December 1, 1938?

A. The Barry Line Company, was the way he operated.

Q. Am I to understand that after that Barry Barge Line operated for a certain time, that then the same barge line became known as this Mechling?

A. No, not the same barge line.

Q. How did this Mechling Barge Company get into the picture; what was that?

A. Well, Mechling was running his boats up and down the river; and Mr. Barry with his one tug boat was pushing for us individual; ours was the only business he had.

Q. Barry had the tug; is that the idea?

A. That is the idea.

Q. And Barry with his tug pushed the barges of the Allied Barge Corporation?

A. That is right.

Q. And Barry with his tug pushed the barges of Mechling?

A. No.

Q. Well, now, again, where did Mechling get into the picture?

A. After our contract was up with—when we bought these barges, the first year our agreement was in our contract with Barry that any time we wanted to cancel the contract we should give him 30 days' notice.

Q. Yes.

A. And we officially gave him his 30 days' notice and told [fol. 1342] him that after 30 days—that for 30 days he could push our barges, and he would be through. And then our contract at that time began with Mr. Mechling of the Mechling Barge Company for the contract of pushing.

Q. After you quit getting pushed by Barry you began to be pushed by Mechling; is that the idea?

A. That is right.

Q. But during the whole time, whether you were pushed by Barry or pushed by Mechling, the barges belong to the Allied Barge Corporation?

A. That is right.

Q. Now, the barges that were owned by the Allied Barge Corporation were loaded with grain which belonged to what companies?

A. To the Co-operated Allied Grain Dealers' Corporation.

Q. And during the time from December 1, 1938, at which time Mr. Barry was pushing barges of the Allied Barge Corporation, down to the present time, was all of the grain that was loaded into the barges belonging to the Allied Barge Corporation owned by the Co-operated Allied Grain Dealers Corporation?

The Witness: Read it again.

(Question read.)

A. No, sir.

By Mr. Cole:

Q. Who else during that period owned the grain that was loaded into and carried up the river in the Allied Barge?

[fol. 1343] A. Well, there had been some of Finnegan's grain loaded in there.

Q. Let us say Finnegan.

A. And there has been one load of the Continental's.

Q. One load of Continental?

A. Maybe two.

Q. Now, was there much for Finnegan?

A. Oh, I imagine half a dozen times, maybe.

Q. When you hauled for Finnegan and this Continental, what arrangements were made; who made them?

A. Well, that was rather as Mr. Robbins explained to you yesterday, an exchange of accommodations of the barges, more than it was——

Q. Now, do you as a representative of a shipper, or as the representative of a barge line, or because of your interest in barge lines,—are you interested sufficiently in the rates that move grain east of Chicago so that you are familiar with the tariff matters pertaining thereto?

A. Oh, I don't know very much about the tariff to the east.

Q. Then, I understand, Mr. Allen, that your principal testimony has been concerned with the grain movement up

to Chicago, rather than its movement beyond or east of Chicago; is that correct?

A. That is right, yes.

Q. Do you know of any other arrangements or under- [fol. 1344] standings of any sort that have any bearing upon that movement east of Chicago, other than those tariff provisions which were introduced in this case by Mr. Tannehill.

The Witness: Repeat that question, will you?

(Question read by the reporter.)

The Witness: You mean the cancellation of this——

By Mr. Cole:

Q. Yes, the changes that we proposed to make in our tariffs; these were all covered by Mr. Tannehill. Do you know of there being anything else than those things that has any bearing upon that movement, or the rating of that movement, or the arrangements for handling east of Chicago, other than these things we put in here?

A. Well, the question is a little beyond me; I don't know that I can answer it.

Mr. Cole: That is all right.

Exam Taylor: Is that all?

Mr. Cole: That is all I have, yes.

Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Exam. Taylor: Come to order, gentlemen. Mr. Cole, had you finished?

Mr. Cole: I have one or two more questions, if I may, Mr. Examiner.

Exam. Taylor: Go ahead.

By Mr. Cole:

Q. Mr. Allen, when the grain gets to Chicago in the barge [fol. 1345] of the Allied Barge Company, which grain is owned by the Co-operative Allied Grain Dealers Corporation, who is it that arranges for the registration of that grain with the Transit Bureau?

A. The man that has bought the grain.

Q. And where does that grain, where does that man buy the grain?

A. Well, he buys it at—that is the point of origin; is that what you mean.

Q. I don't know; I am trying to find out now where the man buys the grain, who registers the grain with the transit bureau.

Mr. Root: You mean where title passes?

The Witness: Well, he probably buys it sitting right at the telephone in his own office, connected with the Co-operative Allied Grain Dealers Corporation at Morris.

By Mr. Cole:

Q. And under your understanding of the contract that is there made, when would the title pass to the purchaser of that grain at Morris, or at Chicago?

A. When he pays the draft attached to the bill of lading.

Q. And where does he pay the draft that is attached to the bill of lading?

A. Well, the Co-operative Allied Grain Dealers Corporation out there would take the bill of lading and attach the draft to it and draw it on the firm that bought the corn. It would be deposited in our local bank there, and it would be [fol. 1346] forwarded to a Chicago bank; and the man that bought the corn would pick it up at that bank there.

Q. Then, when that man in Chicago arranges with his bank in Chicago to pay the draft which is in Chicago, when that draft that is then in Chicago is paid in Chicago, then the man that purchased the grain owns the grain in Chicago; is that correct?

A. That is the way I would understand.

Q. Then, after that man or that interest, or company or corporation has purchased the grain in Chicago, he is the one that registers that grain with the Transit Bureau, is that correct?

A. That is right.

Q. So that the Co-operative Allied Grain Dealers' Corporation, they do not register any grain with the Transit Bureau?

A. No.

Mr. Cole: That is all.

Exam. Taylor: Mr. Bradford?

By Mr. Bradford:

Q. Mr. Allen, I would like to ask you a few questions about exhibit No. 45; in the first section of the exhibit, the first set of figures across the page, you show one cent per bushel as the cost from the farm to the local river market by truck; does that local river market mean Morris?

A. That is what I had in mind, speaking of our own——

Q. Then, if you go farther over on the page, 12 cent Il-
[fol. 1347] linois Proportional rate to Chicago, 6½ cent Lake rate to Chicago, you still show one cent; is that correct?

A. That was where they would be hauling into the rail house down there, you might say.

Q. That does not mean a haul to Morris?

A. No; that is down on—I had Wing in mind when I set this up. Wing is on a 12 cent——

Q. What is the name of that town?

A. Wing, Illinois.

Q. Then, under the column headed 3-cent rate on barge to Chicago you have 2½ cents; is that also on Wing?

A. No; that is Wing corn, but delivered to Morris by barge.

Q. What distance did you use in figuring your 2½ cents a bushel on your haul from Wing to Morris?

A. Forty miles.

Q. And what distance did you use in figuring one cent per bushel on the 12 cent Illinois Proportional rate on corn hauled to Wing?

A. Anywheres within 10 miles of Wing.

Q. On the other part where you show one cent straight across to Morris under the 9½ cent Illinois proportional, and the 5 cent lake rate, and the 3 cent barge rate, what distance did you use there?

A. Morris vicinity, which would be 10 to 15 miles.

Q. 10 to 15 miles?

[fol. 1348] A. Yes.

Q. Would that have been increased if you had gone out 40 miles, which I understand some of this grain was hauled to Morris?

A. Yes.

Q. And if it was 40 miles, would you have shown 2½ cents?

A. That is shown over here; that is what it is.

By Exam. Taylor:

Q. By over here you mean?

A. That other barge over there, alongside of the 6½ cent figures.

By Mr. Bradford:

Q. Do the truckers increase their charges by 2½ times on the ratio of their mileage, say 10 to 40 miles?

A. That is about the customary charges down there; you can get grain hauled 40 miles for 2½; but the man going out there and putting in his time,——

Q. I am asking if that is what the trucker charges?

A. That is what he charges.

Q. 2½ cents for 40 miles, and 1 cent for 15 miles?

A. That is what we would charge.

Q. That is what you would charge, or figure your cost in your own trucks?

A. That is what we would charge, or what the customary rate is down there.

Q. I would like to ask you on the next figures, local ele- [fol. 1349] vator expense, what makes the difference of a cent and a half on 9½ cent Illinois Proportional grain, and the 5 cent Lake grain, and the 3 cent barge grain, of which two are 1½ cents and one is 1 cent?

A. If we were hauling from the farm to our rail house we would have to go to the expense of handling that through our local house to the barge. If we come right straight from the farm, we go to the river elevator——

Q. Is there any difference in the expense from the farm to your rail house than from the farm to the river house?

A. Maybe a few blocks in the distance.

Q. The actual hauling would be the same, wouldn't it?

A. I have got the hauling the same.

Q. Then the 1 cent represents your elevator expense, and transferring the grain from the truck to the barge, and the other from the truck to the car?

A. No; we figure that regardless of river elevator or anything, that we have got to allow our local houses there that is on the rail, we have got to allow them a cent a bushel, or they cannot exist.

Q. And from your rail house you say you have got to allow them a cent and a half?

A. A cent and a half, because we have got a man, and the electricity, and everything.

Q. Don't you have a man and electricity in the river house?

[fol. 1350] A. That cent and a half down below, that takes care of the river house.

Q. That is what I am trying to get at; you have got river elevator expense and local elevator expense.

A. We have got them both.

Q. Why does it cost one one cent to handle grain through your house if you are moving on a 3-cent barge, and 1½ cents if you are moving on a 5-cent Lake local; I am trying to figure out where the one-half cent comes from?

A. Just difference in expense.

Q. Via truck to Chicago you have got local elevator one-quarter of a cent per bushel; what does that mean?

A. I had in mind when I made this schedule up the way that Bacon & Company, the way he operates. He has a local man in that community, that spends his entire time running around to buy grain. Now, he cannot maintain that man out in that country even at a quarter of a cent; but that is what I put in there.

Q. Does that represent any expense putting this grain through an elevator?

A. Just buying expense, just the same as this up here is buying at a local elevator.

Q. I would like to refer to the second column from the left hand side of the page, the 5 cent Lake rate to Chicago, and ask you where that grain goes to Chicago, if it is re-shipped by rail what rate it would pay from Chicago to New York?

[fol. 1351] You say under a 5-cent rate?

Q. Yes, if it was subsequently shipped by rail.

A. Well, I don't know.

Q. You did not, in making up this investigation, or making this investigation referred to in this exhibit—you did not try to find out?

A. All I know is hearsay; I did not look at the tariff.

Q. Assuming that that grain would have to make up the difference between the reshipping rate and the local rate from Chicago, or 8½ cents over the reshipping rate; why didn't you complete the picture and compare what it would cost to take that 5 cent lake rate to Chicago grain clear

through, the same as you did in connection with 9½ cents Illinois Proportional rates?

A. Well, we are really not interested in the grain after it hits Chicago.

Q. Why show it in one case and not the other? You are interested in one case, and not the other?

A. Well, this here has got a reshipping privilege on it.

By Exam. Taylor:

Q. Which are you talking about?

A. The 9½.

By Mr. Bradford:

Q. And the 5 cent lake rate has no reshipping privilege?

A. That is what I understand.

Q. But you know that if it is reshipped it cannot be less [fol. 1352] than the local rate from Chicago as the through rate?

A. That is what I have heard.

Q. Now, I will ask you about your Column 4, via truck direct to Chicago; what would that grain pay after it reached Chicago, if it went to New York by rail?

A. Well, that is in the same category as the 5 cent lake rate.

Q. You did not care to show what the truck rate would pay to New York, in comparison with your barge rate to New York?

A. It wouldn't make any difference whether I showed it or not; I didn't figure it went any further than that, because it is used right here in Chicago.

Q. I will ask you this: I believe you were here when Mr. Robbins testified, and also Mr. Norton; did you hear them say that one of the factors in this grain setup, and one of the reasons for the barge lines on the Illinois River was the competition of the trucks and the lake rates?

A. State that again.

Exam. Taylor: Read it.

(Question read.)

The Witness: I don't remember hearing them saying that, no.

By Mr. Bradford:

Q. Well, would you admit that that was one of the reasons?

A. Well, I think I said here in my testimony that the——

[fol. 1353] Q. You went too fast, I didn't follow you; would you mind telling me what you said about the rate via trucks to Chicago, and the lake rates to Chicago?

A. I said if we as local grain dealers in the town of Morris are forced back to the old Illinois proportional rate we cannot possibly compete with the trucks that run the highway and buy grain direct from the farmer and haul it direct from the farm to Chicago.

Q. Let us follow right from there: if the truck grain does not have a reshipping privilege, and can only move out via lake, don't you believe that you are going beyond that competition when your barge grain is permitted the reshipping rate from Chicago and the truck grain is not?

A. I don't know.

Q. You don't know?

A. No.

Q. It is a simple matter of arithmetic, isn't it?

A. I don't know that, either.

Q. I will ask you about the reshipping rates from Chicago to Central Freight Association territory: I believe you said you were familiar with the exhibit put in by the witness Tannehill as to the application of reshipping rates that they proposed to withdraw?

A. I do not believe I said that.

Q. I understood you to say it; I will ask you first, do you [fol. 1354] know whether the shipping rates ex-barge to Chicago applied to Central Freight Association territory; that is, that territory Pittsburgh and west?

A. Well, I never had any experience with it.

Q. You don't know whether they do or not?

A. I never had any experience with it.

Q. You wouldn't care to state whether they do or not?

A. I just answered, I never had any experience with it.

Q. Well, do you know? You may know, whether you had any experience or not.

A. Only from hearsay.

Q. Has anybody told you?

A. Just what I heard talked around here, is all.

Q. Has anybody ever told you, or have you heard that the

reshipping rates to Central Freight Association territory apply on barge grain.

Exam. Taylor: Mr. Bradford, apparently it would be hearsay if he did say it. We wants facts on this record.

Mr. Bradford: I know we want facts, but you cannot get any answer when you do ask him a question. All right, we will drop it. I will ask you this question: if the reshipping rates apply to Central Freight Association territory on ex-barge grain, but were limited by an application in the tariff so that in no case shall the combination through rate to and from the reshipping point be less than the local [fol. 1355] rate from Chicago, that that applies in connection with the rates to Central Freight Association territory and no such restriction to the Trunk Line territory; do you believe that that is a discrimination against the grain to Central Freight Association territory?

Mr. Root: Object to that, on the ground it asks the witness to draw a legal conclusion.

Exam. Taylor: Objection sustained.

By Mr. Bradford:

Q. I would like to ask you about Mr. Moore; I think you said he lived in Mendota. Is that Percy Moore?

A. I just know him as Moore.

Q. Is he in the grain business?

A. He is a broker over there, yes.

Q. And he furnished the figures for these exhibits?

A. Yes.

Q. Do you know the source, or the authority for his rail rates shown on the exhibit?

A. He told me he got them from M. Brown's office.

Q. Do you know whether he got them direct, by asking Mr. Brown?

A. I don't know.

Q. Do you know whether he got them out of the rate book that is put out by the Chicago Board of Trade?

A. I don't know.

Q. Do you have that rate book in your office?

A. No.

[fol. 1356] Mr. Bradford: Mr. Examiner, I am going to move that any reference to rail rates shown in exhibits 45, 46, 47, and 48 be stricken from the record, as it does not comply with the rules of practice. There is no authority

shown for the rates; based purely on some statements that somebody got from somebody else. And the rules of practice specifically provide that authority must be shown for the rates.

Mr. Root: Your Honor, may we have leave to supply the tariffs showing those to be the rates.

Exam. Taylor: If you wish to do that, comply with the rule—can you do that in the course of the hearings?

Mr. Root: I think so, your Honor.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Have you finshed, Mr. Bradford?

Mr. Bradford: I have finished.

Exam. Taylor: All right, Mr. Brown?

By Mr. Brown:

Q. Mr. Allen——

A. Yes, sir.

Q. Do you know whether the Mr. Moore you referred to is the representative at Mendota of Lowell-Hoit & Company of Chicago?

A. I understand he is.

Q. I wish now to ask a few questions in connection with your exhibits 45 to 48: I understand this exhibit pertains to the business of the Farmers' Square Deal Company.

[fol. 1357] A. That is right.

Q. If I just say Farmers' Square Deal, you will understand I am referring to that company.

A. All right.

Q. Now, on your exhibit 45, beginning at the top, the first item is cost from farm to local river market by rail?

A. Yes, sir.

Q. And down to the item that reads—prefixed by three stars—"As far as the 5-cent Lake rate and trucked corn will go; as it has no further billing; shows expense as." Now, that is the eighth item; now, will you turn to the third column of the rates it is headed via 3-plus cents barge rate to Chicago. If you follow down that column from the top to the bottom, and get down to No. 8, the total shown there is 6.38 cents per bushel; is that correct?

A. That is what it shows here, yes.

Q. Isn't that where your interest in the transportation charges on barge grain ceases?

A. That is right.

Q. So we may call that the cut-off point, so far as your interest is concerned?

A. Yes.

Q. That would also be true, of course, on the righthand part of the exhibit, the second half of it, where you used Wing, Illinois as the point of origin?

[fol. 1358] A. Yes.

Q. I will return to that later; that is, the example as to Wing. Now, as to the lefthand column showing figures using Morris, Illinois as a representative point of origin, I should like to go down that list from one to eight; the first item, cost from farm to local river market by truck, is one cent per bushel?

A. That is right.

Q. Then the next is local elevator expense, one cent per bushel.

A. Which column do you want now?

Q. The very next column, going down from 1 to 8, the second item is Local Elevator Expense, 1 cent per bushel.

A. I don't know which one you are talking about; what is the heading of it?

Q. I am using the lefthand side.

A. Which one are you going down?

Q. I am going down from 1 to 8, and using this column in here, the barge column.

A. All right.

Q. The second item there, now, is local elevator expense, 1 cent per bushel.

A. Yes.

Q. On all the grain that the Square Deal Company handles, how much of it would first go through your local elevator in Morris before it was subsequently taken over to the barge elevator?

[fol. 1359] Exam. Taylor: Designated on this exhibit, the river elevator.

Mr. Brown: Yes.

The Witness: Oh, I don't anticipate over 5 per cent.

By Mr. Brown:

Q. We may cast that item out?

A. No.

Q. Why not?

A. Because we have got to maintain the elevator, and keep a man there, and one thing and another. We use the elevator; the elevator is not obsolete.

Q. But that is your business?

A. Sure it is; this is all our business.

Q. You do avoid that expense of 95 per cent of the business.

A. No, sir.

Q. I am talking about the amount of the grain the Square Deal Company sells to the river elevator regularly for movement by barge to Chicago.

A. That does not talk about the physical elevator; that talks about the business.

Q. Talking about the barge business?

A. I mean this cent right here; we have got to have a cent a bushel to maintain our institution, not just physical elevator cost.

By Exam. Taylor:

Q. In other words, you charge it against the elevator, whether it is handled through that elevator or through [fol. 1360] the river elevator?

A. Sure; I get part of my salary out of there. If I didn't have it there, I wouldn't get it.

Exam. Taylor: I think that is clear on the record.

By Mr. Brown:

Q. I think it should go by truck from farm to river, thence barge to Chicago.

A. I do not.

Q. Very well; we disagree. That is all. Now, the next item is river elevator expense, 1½ cents a bushel; that would be the expense of the Allied Grain Dealers Corporation?

A. That is what Mr. Robbins yesterday was talking about, that makes up a part of his cost down there, yes.

Q. It is not a direct expense, though, to the Square Deal Company?

A. Well, it enters into the shipment.

Q. It enters into the transportation charges?

A. Yes.

Q. But it is not a direct charge against the Square Deal; I am asking that question for this reason: I understood from what has been said here that any grain that you might sell as the Square Deal Company to the Allied Grain Corporation is a delivered price at the River elevator?

A. That is right.

Q. Therefore, I say that should come out.

A. Well, I say it does not; I say it belongs in there.

[fol. 1361] Q. It should come out as far as the Square Deal is concerned; I am not saying it is not a proper charge or an average charge for the Allied Grain Dealers' Corporation.

A. I do not understand what you are getting at then. I thought you were just analyzing where you got this rate of 6.38.

Q. The fourth item, of river elevator trimming expense on barges, where does that trimming expense occur?

A. Here in Chicago; and it is a very unjust expense too.

Q. So that should properly read elevator trimming expense on barges at Chicago?

A. No; it originates in Chicago, but it is——

Mr. Root: The charge originates?

The Witness: The charge originates at Chicago, but it is a part of our expense.

By Mr. Brown:

Q. I am not disputing it is a charge, but I do say it is not a charge at the river elevator trimming,—trimming at the river elevator?

A. I do not care where you put it; we have put it——

Q. You mean it is in the price that you get; you yourself do not pay it as the Square Deal Corporation, do you?

A. What is that?

Q. Do you as the Square Deal Corporation pay that .38 of a cent trimming charge?

A. Sure, we do.

Q. I dispute that. The evidence heretofore has been it is [fol. 1362] .35 of a cent, instead of .38 of a cent?

A. What do your records show that it is charged in the rule book—

Q. Mr. Robbins put it in yesterday at .35; 1¾ for the transportation cost, .35 of a cent for trimming, and then .50 of a cent for weighing and inspection. Now, I am just

calling attention to the slight difference. Now, the next item, No. 5; freight to Chicago on corn 1¾ cents per bushel; that is in accordance with testimony by Mr. Robbins, and I do not question it. The sixth item is weighing and inspection charge, ¼ of a cent; where does that charge accrue?

A. Well, I will tell you where I got that;——

Q. Where does it accrue; where is the work performed for which the charge is ¼ of a cent per bushel?

A. I don't think the work ever occurs; I think you just charge it.

Mr. Brown: That is not responsive.

Exam. Taylor: Where is weighing and inspection supposed to be performed, is the question?

The Witness: Well, that is here in Chicago.

Mr. Brown: I wish the reporter to read the previous remark.

(Remark of the witness read by the reporter.)

By Mr. Brown:

Q. Now, Mr. Allen, do you know that grain cannot be sold on federal grades, or Illinois state grades, without [fol. 1363] being sampled and inspected by a licensed inspector?

A. Well, I have understood that there was an inspection bureau in Chicago, yes.

Q. You understand there is one there?

A. Yes.

Q. And it is there by reason of the federal laws, and the laws of the state of Illinois?

A. I guess that is right.

Q. And you still think it is needless?

Mr. Root: He didn't say that.

Mr. Brown: What did he say?

Mr. Root: He said he doubted whether they did or not.

Mr. Brown: He said it was not done.

The Witness: I doubt it, the inspections we get sometimes.

By Mr. Brown:

Q. You mean you doubt whether the work is actually done?

A. That is what I am getting at.

Q. Well, then, if the work is not done, do you know whether or not a certificate is issued by either the state or the federal department?

A. Sure, they will issue a certificate.

Q. I understand now that it is your charge that inspection certificates are issued by the proper authorities without actually performing the work of inspection?

A. I did not charge that.

[fol. 1364] Q. That is the inference; I will drop it.

A. I will tell you why:——

Q. No, I don't need it; you don't need to tell me anything. I didn't ask it.

Mr. Root: Mr. Examiner, hasn't he got a right to explain?

Exam. Taylor: On redirect you can bring it up.

By Mr. Brown:

Q. On this inspection, is grain inspected by the Allied Grain Dealers Corporation, that you sell and deliver to them?

A. Yes, they look it over; they take a sample out of every load.

Q. Do they issue a certificate of inspection?

A. No.

Q. As a seller to them, they do not give you a certificate of inspection, you say?

A. I guess they would, if I asked them; but I never doubted. The grades was all right.

Q. How do you know whether or not there is a discount that should be taken from you, if it should be graded as No. 2 yellow?

A. They never discounted me.

Q. Then I misunderstood Mr. Robbins.

A. I said they never discounted me; because in the last two years we had the finest grade of grain.

Q. You seem to be different from the ordinary farmer?

[fol. 1365] A. No, I don't think so.

Q. Mr. Allen, I understand that you deliver to the Allied Grain Dealers' Corporation at Morris or Seneca, Illinois grain which you bought from the farmers, had that delivered to those elevators; and you now say that you do not

get from the Allied Grain Dealers Corporation a certificate of inspection.

Mr. Root: May I inquire what he means?

Mr. Brown: Just a moment, please; he said he didn't get one, and he didn't ask for one.

The Witness: There is not a grain elevator in the entire local or country elevators anywhere that ever issue one.

By Mr. Brown:

Q. Well, if the testimony heretofore is that there is an inspection certificate issued, along with the weight, then that evidence was wrong; is that correct?

A. I don't know whether that was ever said or not.

Q. All right; now, the next item on the left hand part of the sheet is No. 7, commission in Chicago, one-half cent per bushel. Now, by whom is that commission paid?

A. Well, I suppose it is paid by the man that buys the corn.

Q. Delivered where?

A. At Chicago.

Q. So I understand the answer is that corn which is delivered by barge to a man in Chicago pays a commission of a half a cent a bushel?

A. What is that, now?

[fol. 1366] Exam. Taylor: Read the question.

(Question read by the reporter.)

By Mr. Brown:

Q. That man who takes delivery at Chicago pays half a cent a bushel commission?

A. Well, that is the way your rules are up here. He does not bid us, he bids us less the commission. He has got to protect you fellows up here, to keep you eating.

Q. Mr. Witness, I am not talking about the Board of Trade rules; you have shown here that a commission of a half a cent a bushel is paid, and I want to know who pays it, and at what place he pays it.

A. Well, I don't know; it is paid here in Chicago; zut then we did not have anything to do with the paying of it ourselves.

Q. That is the point I make: you do not, as a part of your transportation charges and all other charges from

Morris, Illinois to Chicago, pay a half a cent a bushel commission to anybody; is that right?

A. No; for the reason that if we would consign it up there using your spot market as a basis, then they take the full Chicago price and deduct the commission. If it is sold f. o. b. or c. i. f. Chicago, the bid is based then as so much less the commission; it depends on how you sell it.

Q. Yes, there is two sets of terms?

A. Yes.

Q. Let us take one at a time: I am going to take the one [fol. 1367] shown on your exhibit, commission at Chicago, one-half cent a bushel; under what kind of a sale transaction do you as shipper's representative, or Allied Grain Dealers' Corporation, pay a half cent a bushel; and to whom do you pay it?

A. Well, it enters in there with the deductions from the Chicago price, all that stuff.

Q. To whom do you pay it?

A. I didn't say we did pay it; it enters as a part of your costs.

Q. Oh, then it is figured in your cost, because in your opinion under certain rules of the Chicago Board of Trade it is required to be paid by somebody; is that it?

A. Sure, that is it.

Q. But you yourself, neither you as a shipper of the Square Deal, nor the Allied Grain Dealers' Corporation, has paid a half a cent a bushel commission at Chicago to anybody?

A. It has come out of our pocket; I don't care how you get around it. That is what you are trying to do; you do not admit you got it, do you?

Q. Did you say a little while ago that you did not pay that commission to anybody in Chicago?

A. I did not say that.

Q. Well, if you figured it in your cost, and you have not paid it directly, shouldn't it come out of your cost?

A. No. You would take everything out of there, like as [fol. 1368] if the corn would flow to Chicago for nothing, if we use your figures.

Q. I didn't put in any figures——

Mr. Enoch: I do not think the witness understands the theory upon which this exhibit has been constructed; and

we ought to have this representative of Lowell-Hoit and Company come in here.

The Witness: Let me explain to you that Lowell-Hoit and Company never had anything to do with this.

Mr. Brown: We have not got to the man taking delivery yet; we have not yet got over this kind of sale that would involve one-half cent a bushel commission, shown on your exhibit; and I want to find out, Mr. Allen, who pays that; from whose pocket does that come?

The Witness: It ultimately comes out of the farmer's pocket.

By Mr. Brown:

Q. It is in the bid that you pay to the farmer; you admit that. After that has occurred and you have sold your grain at Chicago, do you pay that out to somebody at Chicago, that you have included in your price to the farmer?

A. What is the difference whether you pay it to him or whether he makes a price less the commission; what is the difference?

Q. Mr. Allen, this is supposed to be an exhibit showing the cost.

A. Sure; and that exhibit is right, too; only you are try- [fol. 1369] ing to get around it, that is all.

Q. What is that?

A. I say that exhibit is right, and you are trying to get around it; that is all.

Mr. Brown: I object to the remark, and wish it to be stricken.

The Witness: I will withdraw it.

Exam. Taylor: I think if the witness will answer your questions, and then make his explanation, we will get ahead a lot faster.

By Mr. Brown:

Q. I will drop that for the time being, and I will take up the sale on c. i. f. terms; if grain is sold to move by barge from Morris, Illinois, to move along side of a Chicago elevator on c. i. f. terms, do you as a shipper pay a half cent commission,—pay a half cent a bushel commission to anybody in Chicago?

A. It is figured out of the price, yes.

Q. You understand, now, I am talking about c. i. f. terms, where you get a flat price for delivery at Chicago, a certain kind of grain that there is a certain period of time; is there anything in there said about commission, in your price?

A. We know every day what corn is worth in Chicago, the bid that comes out on your call bid there. And you do not have to be very smart to be able to substract half a cent a bushel off of it, to what they bid you.

[fol. 1370] Q. Well, if they bid you a flat price, we will say 58 cents on c. i. f. terms delivered to Chicago elevator, do they pay you then only 57½ cents a bushel for what was the out-turn weight of that grain?

A. No; if they bid us 58, that is what they would pay you.

Q. Now, would you know how much of the six million odd bushels of the grain that it was stated here was shipped in a certain period by the Allied Grain Dealers' Corporation, I understand from both the elevators, both Morris and Seneca, to Chicago,—are you in a position to say, as an officer of that company, how much of that grain was sold on c. i. f. terms, Chicago?

A. Well, that is Mr. Robbins' end of it; I really couldn't answer that.

Q. As an officer of the company, do you know?

A. No, I don't know.

Q. Who would know?

A. Why, Mr. Robbins would know.

Q. Will Mr. Robbins be here for sometime?

Mr. Root: It looks like two or three more days, if that is what you mean.

By Mr. Brown:

Q. If you had included soy beans in this exhibit 45, taking the first example, what figures would you have shown as the rail cost to Chicago on soy beans?

A. Well, it would have been nine and one-half times 60, instead of nine and one-half times 56; it would have been [fol. 1371] just a little bit more.

Q. In other words, it would have appeared in the first column with a slight difference, because of the four pounds difference in the weight?

A. Yes, that is right.

Q. Do you know whether there is any lower rate on oats from Morris, Illinois by rail than 9½ cents?

A. I don't think there is.

Q. Taking the righthand portion of exhibit 45, where the cost figures are shown, I mean the rail cost figures are shown as 12 cents Illinois proportional, and 6½ cents as the lake local: I believe in answer to a question by Mr. Bradford, you said Wing was representative point for that part of the exhibit?

A. That is what I had in mind, yes.

Q. If I say the local rate from Wing to Chicago is 10 cents——

A. I was thinking about the 12-cent Illinois proportional rate from Wing only. I have that here; I put that down there, that Wing had a 6½ cent rate, but I found out they had a 10. That 6½ does not specify any particular place.

Q. Well, you selected Wing, Illinois.

A. That is in regard to the first column.

Q. Now, you already said that the local rate on corn from Wing, Illinois, to Chicago is 10 cents.

A. Yes.

[fol. 1372] Q. That being the case, if we take the second column, headed 6½ cents and run down to the sixth item, the rate there would be 5.6 per bushel, instead of 3.64, would it not?

A. You say if it was done.

Q. Yes, sir.

A. Yes.

Q. Can you give for the record any point in Illinois from which the Illinois proportional rate by rail is 12 cents and the lake local rate on corn is 6½ cents?

A. Well, I am not familiar with the tariffs; I could not.

Q. Then the answer is no?

A. That is right.

Q. Exhibit 46, please: I believe, Mr. Allen, on your direct examination you said that the average shipment for the years 1934 up to 1938, inclusive, was about 531,170 bushels from the Square Deal Company?

A. What was the date you mentioned?

Q. I thought you said 1934 to 1938, inclusive?

A. I said beginning with January 1, 1934, to date; that was to December 14th, 1939.

Q. December 14th, 1939?

A. Yes.

Mr. Root: That is the date as of which these exhibits were made; you will note on the exhibit, Mr. Brown.

Mr. Brown: Oh, yes. Well, now, if you cast out the [fol. 1373] year 1939, 1,024,939 bushels, can you say offhand what would have been the average for the years 1934 to 1938, inclusive?

A. No, I have not figured it that way.

By Mr. Brown:

Q. Well, if that average of the shipments for 1934 to December 14th, 1939, was 531,170 bushels, what caused the great increase, nearly double that amount, for the year 1939?

A. Well, you can see by the short flow out in 1938, a lot of grain was held back until the next year. That made—if that red spot was pushed up, and they had all been normal, they would have been pretty much the same.

Q. Would you say that it was not largely due to the fact that you had been reaching out farther into the territory to get corn and other grain to ship by barge?

A. No; you can see it was held back. The way this one year went up, it was held back in the farmer's hand.

Q. For what period has the Square Deal Company been buying grain in the vicinity of Morris for shipment by barge?

A. Well, the barge began to operate there sometime in 1933. We did not use the barge for quite awhile; we sat there like these other fellows and tried to fight it out with the rails.

Q. Quite awhile does not answer my question; I want to know when you began buying grain for shipment via barge, the year and about the month.

A. Well, I think I figured it here in my figures, that ap- [fol. 1374] proximately January 1, 1934, was about the time that we——

Q. And I believe you said that from that time on the shipments were mostly by barge.

A. The greatest percent of it; yes, sir.

Q. And when you said that you referred to shipments of the Square Deal Grain Company?

A. Yes.

Q. Exhibit 48, please:——

Exam. Taylor: This is a good spot to quit, isn't it?

Mr. Brown: Yes.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: We will recess until 2:00 o'clock.

(At 12:30 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

[fol. 1375] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Taylor: All right, gentlemen, let's come to order. Are you ready to proceed, Mr. Brown?

Mr. Root: Mr. Examiner——

Exam. Taylor: Mr. Crane.

Mr. Crane: Mr. Examiner, I don't like to interrupt you but I want to enter my appearance, and if I may do it, I would be glad. Halsey McGovern and Willis Crane for the U. S. Secretary of Agriculture. We haven't determined yet whether we will put in any evidence or not, but we will probably appear on brief.

Mr. Brown: Mr. Examiner——

Mr. Root: Pardon me just a minute. Here, Mr. Examiner, is that sufficient? (Handing document to Examiner Taylor). It is the only copy Mr. Mechling happened to have in his pocket. I can get more.

Exam. Taylor: Show it to Mr. Enoch.

Mr. Root: You said that is to be in triplicate, but that is the form. Mr. Mechling happened to have one in his pocket, after they had sent the wrong one in.

Mr. Enoch: He is in the room, isn't he?

Mr. Root: Yes, right back there.

Mr. Enoch: Yes.

[fol. 1376] Mr. Root: But the Examiner asked me to put this in the record. If it meets with your approval, I will be glad to do so.

Exam. Taylor: Are you going to put Mr. Mechling on?

Mr. Root: I am not. Whether someone else will or not, I can't vouch for it.

Mr. Belnap: Yes, he will be.

Exam. Taylor: Then let him put it in at that time.

Mr. Root: Yes, just so I comply with your request, your Honor.

Exam. Taylor: That is fine. All right, Mr. Brown.

Mr. Brown: Mr. Examiner, as a courtesy to Mr. Root, I agreed to have Mr. H. S. Benson, assistant manager of the Transportation Department, Chicago Board of Trade, make up during the recess a memorandum of the interstate local rates to Chicago from Morris, Illinois, to Chicago, beginning with the date of January 8, 1914, to date. And in this memorandum, it is explained that the interstate locals to Chicago are and were also the specifics up to Chicago of the one-factor through rates from Morris, Illinois, to New York and other points in Eastern Trunk Line and New York territories.

Exam. Taylor: That is in your records or the tariffs?

Mr. Brown: The ICC tariffs are here; and before submitting this, I want to say that the 5 cent rate shown on Exhibit 46 was in effect prior to January 8, 1914. And [fol. 1377] beginning——

Exam. Taylor: Prior to January 8th?

Mr. Brown: Yes, prior to January 8, 1914, and beginning with January 8, 1914, the rate was 5½ cents. Here is the memorandum and it can be copied in the record, if you wish, and a copy retained by respondents. The memorandum also explains how the apparent error in Exhibit 46 came about.

Mr. Root: As I understand it, then, Exhibit 46 will stand as it is, as modified by those correct rates?

Mr. Brown: Yes.

Mr. Root: And those rates will correct any errors in 46 as it now appears, is that correct?

Mr. Brown: That was the understanding.

Mr. Day: Not only that, but this will also correct the testimony as to those rate changes as to which Mr. Allen testified?

Mr. Root: That is right, because his testimony was based on the same information that he had put into Exhibit 46.

Mr. Brown: I think Mr. Bradford ought to see it before it is copied on the record.

Mr. Bradford: Let me see it.

Mr. Enoch: Off the record——

Mr. Brown: I think I ought to say, Mr. Bradford, that Mr. Root and I agreed in your absence that if we showed

these rates from Morris, Illinois, which covers the left side [fol. 1378] of Exhibit 46, that ought to be sufficient.

Mr. Bradford: Are we still off the record?

Mr. Brown: No, I don't want to be off the record on this, because we are furnishing the figures.

Mr. Bradford: Mr. Examiner, the dates shown on Exhibit 46, the top line, are also in error. I don't have the exact dates unless they are in this memorandum.

Mr. Brown: They are.

Mr. Bradford: If they are in the memorandum, I will say that Mr. Brown is correct.

Exam. Taylor: Now, let me know, Mr. Root, will you accept this as a supplement to your Exhibit 46, that is to say, Exhibit 46, page 2?

Mr. Root: That is right, Exhibit 46 is only one page.

Exam. Taylor: Well, I say——

Mr. Belnap: Why not, Mr. Examiner, let it be copied in the record?

Exam. Taylor: Let it be copied in the record, but I would also like to have it attached to Exhibit 46 as it is filed in the docket.

Mr. Bradford: What would be wrong, Mr. Examiner, with having this furnished as supplement 2, Exhibit 46; then everybody would have it?

Exam. Taylor: Because, Mr. Bradford, anything that comes in later must be given another number.

[fol. 1379] Mr. Bradford: That is right.

Exam. Taylor: If you will, Miss Reporter, copy that in the record and then attach it to Exhibit 46 as page 2 of that exhibit. There is no objection to that from anybody?

Mr. Bradford: None from me.

Exam. Taylor: Very well.

(Which said document is in words and figures as follows:)

January 18, 1940.

The following Interstate local rates were in effect on grain from Morris, Illinois, to Chicago, Illinois:

January 8, 1914	5½ cents per 100 pounds
June 25, 1918	7
August 26, 1920	10
Jaunary 1, 1922	9
March 28, 1938	9½

(Mr. Allen's exhibit 46 is in error in giving the August 26, 1920, date as August 26, 1926; and in giving the January 1, 1922, date as January 1, 1932.)

The rates above named are contained in the following tariffs:

C.R.I & P. Railway Tariff I.C.C. No.

C-9446	C-11734
C-10603	C-12146
C-10758	C-12497
C-11004	C-12579
C-11168	C-12847

[fol. 1380] The rates above named were also the so-called Illinois Proportionals to Chicago; that is, the specific, or division, to Chicago of the one-factor through rates from Morris, Illinois, to Eastern Tunk Line territory, contained in the following tariffs:

Tariff I.C.C. No.

C. R. I. & P. Railway	C-9455
Do	C-9999
Do	C-10311
Do	C-10329
W. J. Kelly, Agent	839
Do	1126
B. T. Jones, Agent	1373
Do	1754
Do	2046
Do	2515
Do	3055
Do	3356

Mr. Root: Off the record.
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Are we ready to proceed, Mr. Brown?
Mr. Brown: Yes.
Exam. Taylor: Proceed, Mr. Brown.

WILBUR H. ALLEN resumed, having been previously [fol. 1381] sworn, and testified further as follows:

Cross-examination (Contd.).

By Mr. Brown:

Q. Mr. Allen——

A. Yes, sir.

Q. On Exhibit 48, the first item is direct to river buying and the total charges are shown as 5.63 per bushel?

A. Yes.

Q. Now, for convenience, take your Exhibit 45, and on the first column of rates, which is via 9½ IP rate to Chicago, let's call that A. Let's take the next column, which is 3 cents lake rate and call that B; the next column, which is 3 cents plus barge rate, call that C, and the truck, D. I am only doing that because it will expedite the questions I intend to ask. Now, if we take this item of 5.63 cents per bushel, which is the first item on Exhibit 48——

A. Yes.

Q. I find that it is short three-quarters of a cent a bushel of the 6.38 per bushel shown in item 8, column C, Exhibit 45. Now, is that three-quarters of a cent deduction there made up of item 6, a quarter of a cent, and item 7, half a cent?

Mr. Root: You are referring to Exhibit 48, weren't you then?

Mr. Brown: Yes, sir, and comparing it with these items that are given on the left side of Exhibit 45, and I am asking if the deduction of ¾ of a cent is not found in those items 6 and 7; the first being a quarter of a cent and the second [fol. 1382] ½ a cent per bushel.

The Witness: The 5.63 on Exhibit 48 comes from the next to the last column on Exhibit 45.

By Mr. Root:

Q. What is that column headed?

A. That is direct river buying against a 9½ cent rate point.

By Mr. Brown:

Q. Well, if that means direct river buying, shouldn't the deduction be item 2, column C, which is a cent a bushel from the 6.38 a bushel?

Exam. Taylor: What is that again, please?

(Question read.)

The Witness: No. The man that is loose—I mean the man that maintains the river house, he has got right below that a quarter of a cent; he has already got a cent and a half. That gives him a quarter of a cent extra for maintaining, like they do, somebody down in a foreign district to the river town or foreign community, you might say, to pick up the grain from down there. That allows him a quarter of a cent which they would have to pay at least to maintain somebody out in the country to buy the grain.

By Mr. Brown:

Q. Well, that quarter of a cent there which appears on the right half of the sheet——

Exam. Taylor: Pardon me. I see you have lettered these columns. Let's proceed to letter all of them. E would be the 12 cent IP.

Mr. Brown: Yes.

[fol. 1383] Exam. Taylor: F, via 6½ lake rate.

Mr. Brown: Yes.

Exam. Taylor: G, via 3 cent rate on barge to Chicago; H, via truck direct to Chicago; I, direct river buying on 9½ cent IP rate.

Mr. Brown: Yes.

Exam. Taylor: J, direct river buying on 12 cent rate.

By Mr. Brown:

Q. Well, I understand from your explanation, Mr. Allen, that the difference of three-quarters of a cent comes between what is shown in column C and what is shown in column 1, opposite item 2, which is labeled "Local elevator expense"?

A. That what you are referring to as column C takes care of the way that we operate our plant by maintaining a house at Morris. This other here is the man that has the river and just maintains a man out in the territory to buy the corn.

Q. Yes, but your quarter of a cent of bushel under column 1 is for direct river buying on a 9½ cent IP rate, and I don't understand there is any such thing.

A. Well, that means in competition, just like our own town down there. I am referring to a house down there that

does buy direct from the river, and that is the way he operates. Somebody down at Dwight or other territories there that buys for him allows him a quarter of a cent for what corn they can pick up.

[fol. 1384] Q. Well now, let's see if I can get this straight. This quarter of a cent a bushel goes to some solicitor?

A. That is what you might call him.

Q. Who is soliciting business for delivery at a river house?

A. Yes.

Q. Well, when he does that isn't he soliciting for the river house for shipment by barge?

A. Yes.

Q. How can you charge that up under a column that refers to 9½ cent IP rate?

A. I am not charging it up to it.

By Mr. Root:

Q. Explain that.

A. That is the direct river buying—I suppose if you would go clear on, had room there, I would say in the town that has a 9½ cent IP rail rate out of it. And the same way with the next column, where I say direct river buying on a 12 cent rate. That would be direct river buying in a town which has a rail rate out of it of 12 cent IP rate.

By Mr. Brown:

Q. Well, assume now that if you are doing the buying, you would add a cent.

A. Yes.

Q. Under item 2.

A. Yes.

Q. Column C.

A. Yes.

[fol. 1385] Q. If someone else also operating an elevator hired a solicitor, he would only add a quarter of a cent?

A. Yes.

Q. In other words, your charge would be three-quarters of a cent higher than the man who employs a solicitor?

A. That is right.

Q. All right. Now, let's take this 5.63, or rather let's take the 6.38.

Exam. Taylor: From Exhibit 48?

Mr. Brown: Yes.

By Mr. Brown:

Q. Now, that is the local elevator who goes to the river?

A. That is just like we operate.

Q. That would be you?

A. Yes.

Q. Now, if the Allied Grain Dealers Corporation saw fit to go around you and make a bid to the farmer direct for delivery by that farmer to the Allied, wouldn't that figure be reduced to 5.38 per bushel?

Mr. Root: Do you mean 5.38 or 5.63?

Mr. Brown: 5.38. I am still allowing for the 75 cents to go in.

The Witness: Well, that would be true if the group of elevators in that territory didn't control this river house.

By Mr. Brown:

Q. Well, suppose that——

A. And didn't go outside the Morris territory to buy any corn.

[fol. 1386] Q. Well, suppose that, just assume that there is another buyer at Morris not in any way connected with either the Square Deal or the Allied Grain Dealers Corporation and he bids the farmer direct and has it brought in, and if he operates on the same profit as you and makes the same bids, wouldn't the total charge be 5.38 a bushel instead of your 6.38 a bushel?

A. Yes, if you are supposing that, but that is not the way this is done.

Q. Is isn't the way you do it?

A. No, it is not the way—we have already got a house in Morris that is buying direct, and here is the way he does it. In order to get volume, he has to spread out further than the Morris territory and he has got to keep two or three solicitors on his payroll out there in these outlying districts to buy this corn. It is a physical impossibility for one man to sit in an office down there and reach out 25 or 30 miles, in contact with these farmers.

Q. All right, if you want to insist on that quarter of a cent getting in, let's get it down to 5.63 and let's add that quarter of a cent which this independent fellow would have to pay, that is 5.88. Then take out the 1 cent a bushel which is shown as your elevator charge. The charges would get down to 4.88 a bushel, direct buying from the farmer?

A. No.

Mr. Root: Read that question, please.

(Question read.)

[fol. 1387] By Mr. Brown:

Q. I mean the through charges would get down to 4.88 a bushel. Couldn't that be done under your own figures?

A. I don't get just exactly the connection of that 5.88 you are talking about.

Q. Well, here is what I did. I took your own net figure of 5.63.

A. Yes.

Q. Which is the first item on Exhibit 48, and instead of using that in the first place, I took the gross figure of 6.38 a bushel and took 1 cent off, which is what you show for your local elevator charge.

A. Yes.

Q. I said then an independent man who went direct to the farmer and bought the grain instead of going through the Allied stockholders could get those total charges down to 5.38 a bushel. Now, it doesn't take much——

A. No, that is right, if you are going to do it, that is right.

Q. Now, you didn't think that was right because I hadn't put in a quarter of a cent?

A. Well, I——

Q. If I am going to have to put in the quarter of a cent, I want to go down to the 5.63 which you show; then I will add this quarter of a cent as solicitation charge.

A. You are adding that the second time. It is already in that 5.63.

Q. Very well. Then I will just take 1 cent off of the 5.63 [fol. 1388] and get it down to the 4.63. So the elevator operator who buys direct from the farmer——

Q. Hold on a little. We have allowed him a cent and a half to run that elevator down there.

A. What elevator is that?

Q. The one down here at the direct river buying that has got the 5.63 figure we are talking about.

By Exam. Taylor:

Q. That is possibly at Wing?

A. No.

Q. Because the figures on the right refer to Wing.

A. I am speaking about the independent elevator that would be located right on the river.

By Mr. Brown:

Q. Now, let's assume that his charge of a cent and a half for putting it through the elevator would be a fair charge for him; if that is a fair charge for you to set up for your expense.

A. How much?

Q. When I say "your expense," I mean the Allied Grain Dealers.

A. A cent and a half, is that what you said?

Q. Whatever the charge you put up there.

A. I put up a cent and a half.

Q. Al right, I have got that in mind.

A. Yes.

Q. That is all in the 5.63 of your net figure?

A. That is right.

[fol. 1389] Q. Now, you said you get that, the 5.63 as the net figure. Then, I say, inasmuch as that includes your 1 cent local elevator expense, we cut that out.

A. No.

Q. Then the direct buyer gets down to 4.63.

A. No, you don't, because he has got to have the cent and a half to run the house.

Q. I am not cutting out the cent and a half; I am cutting out item 2 in column C.

A. Which column are you cutting it out of?

Q. I am cutting it out of your 5.63.

A. Out of column I?

Q. No, sir.

A. Column C?

Q. Yes, sir. Item No. 2, column C is this one cent charge for going through your local elevator expense. Now, that would be eliminated if another buyer, river point buyer whose expense was a cent and a half a bushel for putting it through his house bid the farmer direct and eliminated that expense of one cent a bushel, because it wouldn't go through his elevator, it wouldn't go through any country elevator; direct from the farm to the river house. That expense, it would be cut down as low as 4.63 for the total charge from the farm to the river house and from the river house to Chicago?

A. I don't agree with you. You have taken that cent out [fol. 1390] when we took out or when we added the .25; took out that cent there and replaced it with the .25.

Q. I was willing to do that at first.

A. That is what we are talking about.

Q. No. You suggested that that 25 come out. I am willing to leave it in, if it is an actual solicitation expense.

A. That is what it is.

Q. Then I will go back to the 5.63, your own net figure, add a quarter of a cent a bushel solicitation to the independant river buyer.

A. Why do you want to add it to 5.63 when it is already added in there?

Q. That is what you said before.

A. I didn't say no such thing. You are the fellow that is doing the saying.

Q. Now all right, I will take it out again, 5.63——

Exam. Taylor: Off the record.

The Witness: If you will read this top heading up here, maybe that would clear it a little bit: "Also, showing from 12 cent rate points IP in comparison with 6½ cent lake rate to Chicago and 3 cents barge rate, also, what direct buying by river houses could do to the local dealers" located in a point, at a 9½ rate point.

By Exam. Taylor:

Q. That would be Morris?

A. That would be Morris.

[fol. 1391] Q. And 12 cents would be Wing?

A. Would be Wing, see. What he could do to him. That is what I am trying to point out.

By Mr. Brown:

Q. I see. What he could do to put him out of business?

A. Yes.

Q. I get you now.

A. That is the idea.

Q. Very well. Now, I will have to go back to the left side of the page and take item 8, column A, and you show 9.08 cents per bushel.

A. Yes.

Q. For the IP buyer who ships IP and pays 9.08 a bushel to get to Chicago?

A. Yes.

Q. Now, as I understand it, under column I, the same item No. 8, the direct river buyer would get it for 5.83 and he

would have the rail shipper beat 3.45 cents per bushel, is that correct?

A. That is correct, yes, sir. We agree on that, don't we?

Q. All right. Of course, I want to say that in both column I and column C, those two items 6 and 7, we think shouldn't be there. But I have got a question and it is just this: The direct buyer could pay the farmer three-quarters of a cent a bushel more than is paid in today through the Allied Grain Dealers Corporation?

[fol. 1392] A. No, sir, you are off your trail again.

Q. You can't get away from that, the different between 5.63 and 6.38?

Q. Yes.

A. Sure, that is correct.

Q. Sure, that is the difference?

A. Yes.

Q. Between those two bids?

A. That is 75 cents a hundred.

Q. So the direct buyer goes to the farmer direct, and he has got to hustle to the extent of three-quarters of a cent a bushel?

A. Yes.

Mr. Brown: That is all.

Mr. Root: We would have admitted that, Mr. Brown, if that is all you want to know.

The Witness: We have got a man down there going direct and this is our only way to combat him. And we are fighting for an existence there.

Exam. Taylor: Pardon me, gentlemen. I think somebody said 75 cents a bushel.

Mr. Brown: Three-quarters of a cent a bushel.

Exam. Taylor: Three-quarters of a cent a bushel is correct.

The Witness: 75 cents a hundred.

[fol. 1393] Exam. Taylor: Mr. Wheat.

By Mr. Wheat:

Q. Mr. Allen, you referred to the loss of grain business into Chicago in the last few years to Indianapolis, Decatur and Peoria.

A. Let me see what I said about that. I said the Chicago grain market had been losing grain for years to other markets, such as Decatur, Peoria and Indianapolis, because of the strict rules and regulations of the Chicago Board of Trade.

Q. How far back did you check that?

A. I didn't check it in figures at all; I checked it from my own knowledge and experience, when I operated an elevator downstate here a hundred miles.

Q. Do you know how much grain Peoria, Indianapolis and Decatur have got in any stated number of years?

A. Well, I have seen the figures but I couldn't relate them.

Q. Have you checked up the receipts at Chicago during any stated number of years?

A. Yes, I have got them all down here somewheres, if you want me to read them to you.

Q. Could you tell me about what period?

A. I will give them to you here from 1922.

Q. Let's start about 1929.

A. I can give them to you from 1922.

Exam. Taylor: He wants them from 1929.

Mr. Belnap: And might I suggest, Mr. Wheat, that after [fol. 1394] 1934, they are all in the record; Mr. Brown's exhibit. It doesn't seem to me to be necessary to encumber the record.

Mr. Wheat: I want to know how the gentleman arrived at his conclusions that the receipts at Chicago were falling off and they were increasing at Decatur, Indianapolis and Peoria.

The Witness: I didn't say that. I said they had been losing grain.

[fol. 1395] By Mr. Wheat:

Q. To Decatur, Indianapolis and Peoria?

A. Yes, from this way: When I was a buyer down here at Fisher, Illinois, which is 13 miles out of Champaign, the Indianapolis and Decatur bids were enough more over Chicago all the time that we hardly ever paid any attention to the Chicago market.

Q. When was that? Can you tell me that?

A. I left there in 1926. I was there from 1918 or 1919 to 1926.

Q. Do you know how the Indianapolis market gets the grain, Mr. Allen?

A. Well, we got our bids through the I. H. French and Company, Champaign.

Q. I mean on what basis?

A. F.O.B. our track.

Q. In other words, it wasn't a delivered price Indianapolis, was it?

A. Not at all.

Q. Wasn't it based on the Ohio River rate on a market rate, ordinarily?

A. I believe on the New York rate, ordinarily.

Q. The way the Decatur bid is ordinarily made, too?

A. That bid is so much F.O.B. our track, yes.

Q. That was in 1926?

A. Well, that was up to that time. I left there in 1926.

Mr. Wheat: That is all I have.

[fol. 1396] Mr. Bradford: May I ask one question along that line?

Exam. Taylor: Mr. Bradford.

By Mr. Bradford:

Q. How far is Fisher, Illinois, from the Illinois River?

A. It is just about—I think it is around 75 or 80 miles.

Q. And would the nearest loading point on the Illinois River for barge line grain from Fisher be that far as you stated, or would it be further? Take Morris.

A. Morris would be about the most direct line, yes.

Q. Do you make any claim in the statements you made about losing grain, Chicago losing grain to Indianapolis, Decatur and Peoria, that is from northern Illinois?

A. I am speaking of Fisher or Wing, any of those places that have the Wabash or like the Central there at Fisher that have the Indianapolis bids.

Q. And your knowledge of the bids was based on your experience up to 1926?

A. I know that they lost business right along there for the reason that the Indianapolis and Decatur bids were higher than the Chicago.

Q. Since 1926, do you know what the situation has been as to Wing; take that as an example.

A. Well, Mr. Barkley testified——

Q. No, I am asking you if you know; I am not asking what Mr. Barkley testified.

[fol. 1397] A. Well, the bids come up to Wing on the Wabash without any—that is, he gets the Decatur bids right along.

Q. I am talking about Indianapolis now; I am not talking about Decatur.

A. I don't suppose that Wing gets an Indianapolis bid that is any good to him; I don't know.

Q. Then, so far as your statement about Chicago losing grain to Indianapolis, it doesn't include Wing in this territory we have reference to in this case, does it?

A. No, I would say not.

Mr. Bradford: That is all.

Exam. Taylor: Anything further by counsel in support of respondents? (No response.) Redirect.

Redirect examination.

By Mr. Root:

Q. Mr. Allen, on cross-examination there were quite a number of questions and some discussion relative to who made out the checks.

A. Who made out what?

Q. Who made out the checks to the Allied Barge Corporation in the payment of freight from Morris to Chicago for Cooperative Allied Grain Dealers Corporation grain. I wonder if you could state that specifically to clear up the record.

Mr. Enoch: I think that is clear in the record, unless he wants to change his testimony on direct.

Mr. Root: I don't think it is. I think in about thirty [fol. 1398] words he can straighten that out.

The Witness: If a barge of corn arrives in Chicago in one of our barges and when it is weighed out and the official weights are given, the Continental Grain Company, if they should be the ones that buy the corn, issues their check direct to the Allied Barge Company for the freight; and if it should be sold by Mr. Robbins through a commission house and the commission house, in turn, sold it to one of these river—I mean the man that actually buys the grain, then the check to the Barge Corporation would come from the

commission house, made payable and back to the Allied Barge Corporation.

By Mr. Root:

Q. And I take it, the balance, the sale price of the grain in either event, deducting the freight, would be remitted to the Allied Grain Corporation?

A. That is where they get theirs.

Q. Mr. Allen, in connection with the operation of your Farmers' Square Deal Grain Company in Morris, are the bids which you give to the farmers for their corn or other grain F.O.B. the farm, or delivered to the elevator?

A. The blackboard that we have in the office there says whatever the price happens to be that day F.O.B. the farm.

Q. Well, what percentage of the corn delivered by your elevator during the past two or three years—I mean now the Farmers' Square Deal—has been purchased F.O.B. the farm?

A. Oh, I think 99 per cent of it.

[fol. 1399] Q. And most of that is hauled to market in your own trucks, in the three trucks you described this morning.

A. Practically all of it, yes.

Q. Occasionally you have to rent others as the business demands?

A. As the business demands, yes.

Q. Will you explain for the purpose of the record how you, as an individual, acquired title to the ten shares of stock in the Cooperative Allied Dealers Corporation that you mentioned this morning?

A. At the time that the subscription list was circulated, the Farmers' Square Deal subscribed for 70 shares at $100 a share, which was $7,000. I was not a member of our own Board, being manager, and we have directors other than that. I wasn't eligible as a director in the Allied Co-operative—Allied Grain Dealers Association to be an officer. So when they made out the certificates, they made out the—my board of directors instructed that 60 of these shares be made out in the name of the Farmers' Square Deal Grain Company and ten of them be made out in my name, and then at the end of the year, we had a fairly decent year and they wanted to give me a bonus and they wrote it into the records of the company and endorsed it on the stock certificate, that these ten shares were given to me without any

strings attached to them at all, as a bonus for the year's work.

Q. And you are the only individual other than an elevator [fol. 1400] operator who does own stock in the Cooperative Allied Grain Dealers Corporation?

A. Yes, that don't——

Q. Don't own and operate——

A. Don't own an elevator outside.

Q. I see. In cross-examination, you quoted figures as to surpluses, bills payable and so forth of an average of fifty elevators given by Harry Hieser, an auditor for a grain body's annual meeting. Is that the body of which Mr. Farlow is secretary?

A. It is, yes, sir.

Q. And that is the same Mr. Farlow that testified in this case?

A. Yes, sir.

Q. And was that report made in the presence of Mr. Farlow?

A. It was.

Q. To your knowledge, he has been familiar with those figures?

A. Absolutely.

Q. On cross-examination, it was brought out that over the past eight years, I believe, wasn't it, Mr. Day mentioned, perhaps ten, that there has been a variation of approximately $1 per bushel in the price of corn or the paid-for price of corn, that is, to the producer. Now, in the ordinary operation of the elevator, would it make any difference to the elevator operator in the amount that he gets, what the price of corn to the farmer is?

[fol. 1401] Exam. Taylor: Just a minute.

Mr. Root: I got that pretty involved.

Exam. Taylor: Will the reporter read that question?

(Question read.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: Our bids are based practically—the competition has drove us to the point where we have to bid everything, practically, everything there is in it and I don't think, in the last several years, that we have ever bid any different than just that way.

By Mr. Root:

Q. What way?

A. Than two cents under the bid that Mr. Robbins gives to us, which takes care of the hauling and their elevator charge.

Q. Back before the days of the river elevators and you used to sell all your grain by rail, how much did you try to make for the elevator in those days?

A. Well, the common figures and the way the boys used to get together and try to agree what was a working basis, and it was conceded at that time to be 2½ and 3 cents a bushel as an elevator operating profit, and then the farmer had to bring it into you. Now, we are buying it at a 2 cent margin and hauling it for him, right direct from the farm.

Q. What I am trying to bring out, assuming that you buy 500,000 bushels of corn this year at the Farmers' Square [fol. 1402] Deal Grain Company for 30 cents a bushel and next year you buy 500,000 bushels of corn at a dollar a bushel, would there be any material difference in the profit that the Farmers' Square Deal would make for the year, all other factors being equal?

A. No, the margin would be the same.

Q. On cross examination, there was some question discussed with regard to contacts which you have had with barge lines. With what barge lines have you had personal contact?

Mr. Enoch: I don't recall that coming up on cross examination. That is getting back into something that is direct. That is a question that hasn't been gone into.

Exam. Taylor: Who asked that question?

Mr. Cole: I did.

Exam. Taylor: Mr. Cole.

By Mr. Root:

Q. There was a little misunderstanding as to what the contact was, whether it is personal or business capacity. I want to straighten that out.

A. I have had no contact or dealings with any barge concern personally. It has all been in the interest of either the Cooperative Allied Dealers Corporation or the Allied Barge Corporation.

Q. You, of course, have had personal dealings with the Allied Barge Corporation?

A. I have, yes. It is our own——
Q. And on——
[fol. 1403] Mr. Enoch: Let him finish.

By Mr. Root:

Q. Go ahead.
A. That is our own company there.
Q. You personally have dealt with that?
A. Yes.
Q. Now, when you dealt with the Barry Barge Line or the A. L. Mechling Barge Line, on whose behalf were you dealing?
A. Either the Cooperative Grain Dealers Corporation or the Allied Barge Corporation.
Q. But not for yourself as an individual?
A. Not my own stuff individually at all.
Q. Mr. Allen, do you know whether the grain sold by the Cooperative Allied Grain Dealers Corporation is sold F. O. B. Chicago or CIF Chicago?
A. CIF Chicago, I think.
Q. And if you made any statement——

By Mr. Day:

Q. Just a moment; don't you know?
A. Yes, I will say CIF Chicago.

By Mr. Root:

Q. If you made any statements to the contrary in your testimony, would you like to correct them at this time?
A. Sure.

Mr. Enoch: Oh, let's be specific about that.
Mr. Root: Well, if he has at any time said——
Mr. Enoch: You mean about the CIF proposition?
Mr. Root: CIF and F. O. B., that is all I am referring to.
[fol. 1404] Mr. Enoch: All right.

By Mr. Root:

Q. Mr. Allen, on cross examination you stated that you had some doubt as to whether or not the grain was actually graded and examined in Chicago. Upon what fact do you base the doubt which you have?
A. Well, sometime this winter, I can't exactly state the date, we had——

Q. Who is "we"?

A. The Farmers' Square Deal Grain Company had two —about 20,000 bushels of oats that were loaded into two separate hatches on these barges and sent into Chicago. We had, in an outside shed there we had——

By Exam Taylor:

Q. Outside shed where?

A. At Morris, at the Farmers' Square Deal, we had a roof that leaked. And on the top of that, when the oats come down first, was a lot of musty oats that were of an inferior quality and we sorted those out and put them in our own elevator there in town and held them until after we get all the good oats in, and then we loaded these poor ones in the last hatch, which was the last hatch loaded; and when they arrived in Chicago, the ones that we thought was the musty and poor oats graded No. 2 and the hatch of good oats graded sample grade. So that is the reason, as I said this morning, that I don't think they ever looked at them.

By Mr. Enoch:

Q. That might be a reflection on the origin end as well as [fol. 1405] the destination?

A. That was our experience. I don't know what happened. And I also had one time several years ago, a carload of beans that during the entire season we had sorted them up, all the bad ones that come in and throwed them in a bin by themselves; and when the season was over, we loaded them on a car and consigned them to the Allied Mills, Incorporated, at Peoria; and I know those beans, two-thirds of them were entirely rotten and I expected to get about 60 cents bushel for them because I had bought them on that kind of a discount, and they come back grade No. 2 and paid me $1.44 a bushel for them.

By Mr. Brown:

Q. They were just being nice to you, weren't they?

A. Sure, I got no kick coming on that. I am trying——

Mr. Brown: Will you have him tell us the date on that, Mr. Root.

By Mr. Root:

Q. Will you give the weight as near as you can.

Mr. Brown: I want to know the date.

The Witness: I can't tell you to the day, but I can tell you the year and the time of the year. It was in the bean time, that would be in the fall, probably in October.

By Mr. Enoch:

Q. Since 1900, wasn't it?

A. Oh, a little bit since that. But that was in the fall of —let's see, I went to Rochester, Minnesota, in 1926, took up this job down there in 1927. It was either the fall of 1927 [fol. 1406] or '28.

Q. Very indefinite, of course. You didn't appeal that inspection at Peoria, did you?

A. Not on your life.

By Mr. Bradford:

Q. Would you mind stating who the Chicago shipment was billed to?

Mr. Root: What was that question?

Mr. Bradford: I asked him who the consignment to Chicago was billed to.

The Witness: Mr. Robbins stated it just down there and I don't know as I can tell you exactly, unless you want me to ask him right here.

By Mr. Bradford:

Q. You know all about the grade, but you don't know who handled it?

A. I wasn't interested particularly in who handled it. I know what came back.

Q. In other words, you don't care to say who?

A. No, I would tell you, if I knew.

By Mr. Brown:

Q. Mr. Allen, did you also have the right to appeal on that barge at Chicago?

A. Well, I was afraid they might grade them both sample grade then because I knew one of them was sample grade.

Q. Well, you didn't lose money on either one of those transactions, did you?

A. No, I made money.

[fol. 1407] Q. Still, you don't think the inspection is very good?

A. If it had been very good, we would have got what was coming to us; but otherwise, we got the best of it.

Mr. Bradford: Off the record.

(Discussion outside the record.)

Exam Taylor: Back on the record.

By Mr. Root:

Q. Mr. Allen, on cross examination, I believe you made this statement, or this statement in substance, that you had no interest in grain after it was delivered in Chicago. By that I mean the Allied Grain Dealers Corporation had no interest in, I take it that you meant. Will you explain that situation? Explain just what you did mean.

A. I meant no physical interest in it as far as handling the grain or anything of that kind, or the money. Of course, I am interested in grain that hits Chicago on whether it was—how it can be handled when it gets here. If the cancellation of this ex-river grain affects the buying power of the man that we sell to, of course I would be interested in it. I am interested in it from the point that if he can't take this grain and deliver it on future contracts and he can't ship it east, why, he will buy this grain back cheap enough from the stated Chicago price to make up this difference in freight.

Q. One more question. Mr. Allen, when the Farmers' Square Deal Grain Company or any other elevator sells grain to the Allied Grain Dealers Corporation or Coopera-

[fol. 1408] tive Allied Grain Dealers Corporation, does the elevator so selling guarantee title to the grain to the Cooperative Allied Grain Dealers Corporation?

A. Yes, we have to watch out for chattel mortgages and liens and all that stuff.

Q. Now, calling your attention to Column 1 in Exhibit 45, you have a notation in there of 25 cents paid to what you have described as the solicitor.

Mr. Bradford: 25/100.

By Mr. Root:

Q. Yes, a quarter of a cent a bushel paid to a solicitor by river house buying direct from the farmers. Now, in such

event, would that solicitor receiving the 25 cents per bushel——

Exam. Taylor:

By Mr. Root:

Q. Or quarter of a cent per bushel, guarantee title to the river house?

A. No, he is just a hired man that drives the country and solicits grain.

Q. So that the river elevator would have to take the chance on the title of grain himself?

A. That is one reason that you need never fear very much of river direct buying to be very serious, because back in this country somewheres, you have got to have somebody that will look after the personal contact of the farmer and the title to this grain and other things that are connected to the man then handling it, and one man sitting [fol. 1409] down there at the river and trying to reach out that far with four or five million bushels a year couldn't possibly do it.

Q. In Morris, you have a man that does that and he hasn't put your Cooperative group out of business yet, has he?

A. No, he hasn't. He put himself out of business.

Mr. Root: That is all, your Honor.

Exam. Taylor: Any other questions by protestants?

Mr. Day: I have a few here.

Exam. Taylor: Mr. Day. Redirect—or recross, rather.

Recross examination.

By Mr. Day:

Q. Did you discuss with Mr. Root during the noon recess the answers that you made on cross examination here today?

A. Nothing more than he called my attention to what I said in regard to what I interpreted the physical interest in this corn when it reached Chicago.

Q. And he suggested some changes should be made in your answers?

A. He said I was taking the wrong attitude as to what your question was.

Q. Now, how many of these fifty elevators that were covered by this convention's study are located in Grundy County?

Mr. Root: I believe the exhibit shows that, Mr. Day.

Mr. Day: No, it doesn't. It is just his oral testimony that it was an average of fifty elevators in the State of [fol. 1410] Illinois.

The Witness: I can't tell you just there——

By Mr. Day:

Q. You don't know where those elevators are located?

A. No, I just have the pamphlets that are handed out each year at the convention.

Q. And to be brief, you don't know what elevators they are?

A. I couldn't tell you just what——

Q. And where they are located?

A. They are located in the——

Q. State of Illinois?

A. State of Illinois, yes.

Q. And there are 102 counties in Illinois?

A. Yes, I guess that is right.

Q. Well, there were when I went to school; I guess they haven't changed.

A. I don't think so.

Q. And the State of Illinois is about 400 miles long, or more, isn't it?

A. Yes.

Q. And a couple hundred miles wide?

A. Yes.

Q. Now, do you know what the total production of grain in Illinois was, say, during 1938 or 1939?

A. No, I couldn't tell you without the records.

[fol. 1411] Q. You stated that you were driven by your competition to make your present basis of bidding about 2 cents under what Mr. Robbins bid to you?

A. That is right.

Q. What competition did you mean?

A. Well, we have the Quaker Oats competition down there.

Q. Down where?

A. At Morris.

Q. Have they a plant at Morris?

A. They have a plant at Morris, and then we have the——

By Mr. Root:

Q. And they buy in the countryside?

A. And they buy in the countryside. We have the James Finnegan Grain Corporation that operate on the river and we have elevators on all sides of us.

By Mr. Day:

Q. You don't sell all your grain to Finnegan? Doesn't Finnegan sell all its grain to Quaker Oats?

Mr. Root: You got it just reversed.

Mr. Day: You ask him; I am not familiar with that situation.

Mr. Enoch: It is my fault.

The Witness: I might straighten you out as far as just what happens down there; that the Quaker Oats having a plant on the railroad there today wouldn't go in with our Allied bunch and they ship their grain through Finnegan on some sort of an arrangement. Now, whether it is sold [fol. 1412] to him or whether it is sold up here in Chicago I don't know, but I think the most of their grain goes through Finnegan in some form.

Mr. Day: That is all I have.

Mr. Cole: I would like to——

Exam. Taylor: Mr. Cole.

Mr Cole: If it is my turn.

Exam. Taylor: Yes.

By Mr. Cole:

Q. Mr. Allen, about this interest that you have in the ability of the grain to pass through Chicago, do you know of there being at the present time any definite connection in the price of the grain in Chicago based upon any privileges that the grain has beyond Chicago?

[fol. 1413] A. Well, reading the rules of the Board of Trade, I know that grain that don't have a reshipping privilege is not deliverable on contracts. And if any grain that we would sell to them that didn't have reshipping privileges, he couldn't demand that we sell to them; we sell to Mr. Robbins and Mr. Robbins dealing up there.

By Exam. Taylor:

Q. By "we," you mean the Square Deal?

A. I mean the Square Deal. He possibly couldn't get as good a price for the grain that we have to offer him if the man he wanted to sell to didn't have a definite outlet for that grain when he bought it.

By Mr. Cole:

Q. Now, Mr. Allen, in these last few years—you said that the grain has to have a reshipping privilege out of Chicago in order to entitle it or in order to enable it to get through without a discount, is that it?

A. No, I think I said that man that bought it may if he didn't know what he could do with it at the time he bought it, he would buy it at a discount. What I mean to say is that if we offered him, if the Co-operative Allied Dealers down there offered him 30,000 bushels of grain and he had an order laying on his table for it to go out by lake, he would know just what he could do with it, but if he didn't have an order laying on his table and we offered him the grain and this reshipping privilege was in, he could turn around and sell at hedge, as we call it, on the board, and [fol. 1414] then when the order did come in, he could pull his hedge off and sell the corn. But if this reshipping privilege was taken away, he didn't have the order and he couldn't sell it on the board, he would probably tell us he couldn't handle it or he would buy it back at enough discount to take care of that difference in the freight rate, going out of here.

Q. Now, if at the time——

By Exam. Taylor:

Q. Going out of Chicago?

A. Going out of Chicago.

By Mr. Cole:

Q. If at the time that this man was in the position to make that hedge, if there were varying provisions which still enabled him to have a reshipping privilege but the privilege being different in the amount of money that was to be connected with them, dependent upon whether the man went to trunk line destinations or CFA destinations,

would that have the same effect upon this man's difference in prices that he would secure?

Mr. Root: If the reporter would read that to me—I didn't understand it.

The Witness: It is too long for me to analyze.

Exam. Taylor: Read the question, Miss Reporter.

(Question read.)

Mr. Root: Your Honor, I——

The Witness: I think that is too complicated for me.

Mr. Root: I don't understand it.

[fol. 1415] Exam. Taylor: Can you reframe the question?

Mr. Cole: Yes, I will.

By Mr. Cole:

Q. Mr. Allen, you testified that it was necessary for the man to have a reshipping privilege, did you not?

A. Well, I believe I said that if he didn't have an order or didn't have a reshipping privilege, then he would have to buy it, he would have to buy it at a discount enough under the Chicago board bid to take care of the difference in the freight.

Q. All right. Now, let's suppose that he had a reshipping privilege but that the reshipping privilege was different to Trunk Line territory than it was to CFA territory as the destination.

Exam. Taylor: You mean different in amount?

Mr. Cole: Different in amount.

Mr. Brown: The rate?

By Mr. Cole:

Q. The rate he would have to pay would be different; the basis for it would be different. Have you ever heard of the man taking a different basis from which to construct his price for the grain?

A. I don't know as I get it all exactly, but we had a like experience up here several years ago when they had in that 6 cent lake rate.

Q. Just a minute, Mr. Allen, when you say 6 cent lake rate, are you talking about a rate from an origin to Chicago as the destination?

[fol. 1416] A. That is from Morris to Chicago.

Q. Now, Mr. Allen, everything that I have asked you about is concerned with the movement beyond Chicago. I don't care a hoot about how the stuff gets to Chicago; I never did. After the stuff gets to Chicago, I am asking you if there were different levies against the grain beyond Chicago, if the man that buys the grain in Chicago base his price upon those differences in the levies upon the outbound rate?

Mr. Belnap: Mr. Cole, can't you give an example in money what you are asking about?

Mr. Root: Very abstract.

By Mr. Cole:

Q. If the local rate from Chicago to Pittsburgh is 19 cents——

Mr. Belnap: What rate?

By Mr. Cole:

Q. If the local rate from Chicago to Pittsburgh is 19 cents and if the local rate from Chicago to Buffalo—what is that rate, Jack?

Mr. Brown: Depends on where it comes from.

Mr. Cole: I am talking about the local, the flat.

Mr. Brown: It would be 28½ cents local.

Mr. Cole: 28½?

Mr. Brown: Local from Chicago.

Mr. Cole: I am talking about that. 28½, did you say?

Mr. Brown: 28½.

By Mr. Cole:

Q. If the rate from Chicago to Buffalo is 28½ cents and [fol. 1417] if the local rate from Chicago to Pittsburgh is 19 cents—is that correct?

Mr. Brown: Oh, no, that is the same as Buffalo; local rate from Chicago locally to Pittsburgh and Buffalo, 28½ cents.

Mr. Cole: Off the record.

(Discussion outside the record.)

Exam. Taylor: Back on the record.
Mr. Brown: You withdraw that question then?
Mr. Cole: I withdraw the question.

By Mr. Cole:

Q. Mr. Allen, now suppose that the rates, the local rates from Chicago to Buffalo and Pittsburgh are 28½ cents flat, and the local rates to New York are 34½ cents. Suppose your grain in Chicago, moving east from Chicago, could take 26 cents to New York but 21½ cents to Pittsburgh. Would that make a difference in the price being secured for the grain in Chicago?

Mr. Root: Just a moment. By whom?

By Mr. Cole:

Q. By your Square Deal elevator when they go to sell it.

Mr. Root: You mean if he knows.
Mr. Cole: Yes, if he knows.
The Witness: Well, I am not a rate expert. I don't want to express my opinion on that because I just don't exactly get the figures.

By Mr. Cole:

Q. Well, in selling of the grain, have you ever had it [fol. 1418] brought to your attention that there is a difficulty or a price difference or an influence on the price dependent upon the territory in which that grain is later to go to?

A. That is what I started to tell you a minute ago when I shut off.

Q. What is that?

A. That a few years ago when we had this 6 cent local rate into Chicago——

By Mr. Root:

Q. A lake local you mean?

A. A lake local, similar to what we have now, that is when we were shipping on the rail and our barge down and we were trying to stay on the rail——

Mr. Cole: Yes.

The Witness: We would send car after car that would sell—we could look at the price quoted or we could look at the Chicago paper or anything and see that IP corn was selling at a stipulated figure, which was published, and that the—that would say IP sales, and right following it would be a sale on a lake basis as much as 2½ cents under what the IP sale was.

By Mr. Root:

Q. 2½ cents a what?

A. 2½ cents a bushel, and the commission man would explain it, this is the reason he couldn't get the price that was equal to the IP, was because that corn had no reshipping value.

By Mr. Cole:

Q. Which corn?

[fol. 1419] A. My corn or corn that was in there.

Q. The IP corn?

A. That my corn or corn that was in there went in on the 6 cent local rate, 6 cent lake rate; wouldn't sell as equal —wouldn't sell within 2½ cents of what the car right next to it sold because it had an IP billing. Otherwise, they just deducted the amount off of the freight, I mean off of the price, that leveled it back with the cost of the IP corn.

Q. You mean that the corn that had paid the greater freight charge in there——

A. Sold at highest price.

Q. Sold at the highest price because it had that extra freight charge increment in its value?

A. It had the reshipping value and the other car didn't.

Q. Well, the car that had the greater value, was that the car that had paid the higher freight charge in there?

A. Sure, but the man back at home here got just the same price.

Q. For the two cars?

A. For the two cars. It didn't make a bit of difference how they sold it, whether they sold it IP or whether they sold it lake, the man back home got the same price.

By Exam. Taylor:

Q. By the man back at home, you mean——

A. I mean my elevator.

By Mr. Cole:

Q. Then of the two cars, the car in connection with which they had laid out the extra 2 cents in freight charge, they [fol. 1420] still had that value connected with it over and above the car on which they had not initially laid out the extra 2 cents, is that correct, Mr. Allen?

A. That is correct.

Q. Now, on these other things, I don't remember whether you answered this question of mine as to whether you had ever heard of there being an influence, a different influence, whether the grain was going, say to Trunk Line or whether it was going to CFA destinations or whether it was going in export channels or things like that. Have you ever heard of a definite influence on the price you have ever been able to get for your grain?

A. I don't recall that, no.

Mr. Cole: That is all, thank you.

Exam. Taylor: We will have a recess for five minutes.

(Recess taken.)

Exam. Taylor: Have respondents finished? Mr. Enoch has some

By Mr. Enoch:

Q. Mr. Allen.

A. Yes.

Q. Do you recall your discussion with me during your direct testimony when we had under consideration Exhibit No. 32?

A. Yes.

Q. Have you intended, in your redirect in answer to [fol. 1421] questions by Mr. Root, to change that testimony?

By Mr. Root:

Q. Do you recall what Exhibit 32 was?

A. Yes, but I don't remember of the redirect or anything that referred to that.

Mr. Root: I didn't mean to.

By Mr. Enoch:

Q. Some of the questions related to you, only you dealt with the Continental Grain Company as a receiver rather

than Lowell Hoit. What I am anxious to find out is whether, as far as that exhibit is concerned and Lowell Hoit is concerned, you intended to change your testimony on direct?

Mr. Root: Now, Mr. Enoch—I just want to be off the record here.

Exam. Taylor: Yes, off the record.

(Discussion outside the record.)

By Mr. Enoch:

Q. Won't you say on the record that you hadn't intended to change your testimony?

A. That I hadn't intended to change it?

Q. That you had not changed your testimony in respect to the transaction to which I directed your attention.

A. I don't recall what the—do you just refer on that exhibit 32 just to that one that was directed to Lowell Hoit?

Q. Yes. You described——

A. Yes, that would stand.

Q. About the signature on that exhibit there?

A. Yes.

[fol. 1422] Q. And the payment of such charges as were mentioned?

A. They would be just exactly the same, except that the—just the firm names, that is the two different houses.

Q. You haven't intended to change what you said?

A. No.

Q. About Exhibit 32?

A. No.

Q. And the discussion in that connection?

A. No.

Q. Now, when you get to the Continental——

Mr. Belnap: Might I inquire what he meant by the "firm names"?

By Mr. Belnap:

Q. You said they would be exactly the same except the firm names would be different.

A. This one here he is referring to has the firm name of Lowell Hoit up at the top, and if we had been talking about Continental, it would be the Continental up there.

By Mr. Root:

Q. What do you mean by "talking"? If you had sold it to Continental, it would have said Continental?

A. It would have said Continental.

Q. If you had sold it to Lowell Hoit——

A. It would have said Lowell Hoit.

Mr. Root: Sold it to Brennan, it would have said Brennan?

By Mr. Belnap:

Q. The transaction would have been handled in exactly [fol. 1423] the same way in either event?

A. Either event.

By Mr. Enoch:

Q. Well, now, when the Continental makes out a check for freight charges, and I understand you to say that it does when they are receiver, when it is the receiver, to whom is that check made?

Mr. Root: Which check? Which check are you speaking about?

Mr. Enoch: What?

Mr. Root: Which check are you speaking about?

Mr. Enoch: Let's see if there is more than one check.

Mr. Root: He testified there were.

By Mr. Enoch:

Q. Well, to whom are the checks made?

A. The deduction from the total sum for the freight, that check would be made to the Allied Barge Corporation; and the deduction for the trimming and all other expenses attached to it would be deducted from the balance, and that check would be made less the draft that was drawn on it to the Co-operative Allied Grain Corporation. That takes care of the whole transaction.

Q. Now, when the Continental is the receiver, does the Continental go over to the office of Lowell Hoit & Company and get this gentleman who represents you there at the office to acknowledge receipt of those freight charges on this document which is surrendered to support the outbound movement on proportional rates?

A. Well, they get together in some fashion. I don't know [fol. 1424] whether they come over there or whether he

goes over there. I never inquired. They get together some way.

Mr. Enoch: That is all.

By Mr. Brown:

Q. Mr. Allen——

Exam. Taylor: Mr. Brown.

By Mr. Brown:

Q. Is there anything in the bids you now receive from the Chicago buyers for barge grain that shows premiums as being paid because that barge grain is now deliverable on future contracts?

A. I don't personally, Mr. Brown, receive any bids from the Chicago house. Mr. Robbins receives that and then he bids me.

Q. Let the question stand as made to you as an officer of the Allied Grain Dealers Corporation.

A. I don't do any of the active business of the buying, so I wouldn't know.

Q. Then why did you express the fear that there would be discounts if something happened so this barge grain wouldn't be deliverable on future contracts, if you don't know anything now about what the bids from the Chicago buyers are based on?

A. Well, we just know they will be, that is all.

Q. How do you know it if you have nothing to do with the grain after it is delivered in Chicago?

A. I told you the experience we had before.

Q. When was that and in what connection?

Mr. Root: Your Honor, if I may say so, I think Mr. Cole [fol. 1425] asked the identical question, received the same answer.

Mr. Brown: No.

Mr. Root: Sure, he did. Sure, he did, redirect.

Mr. Brown: No, in answer to you he said that he had no physical connection with the grain after it was unloaded in Chicago. I want to know whether he has got any financial connection with the grain after he has received his price for it. Unless there is a dispute about grades or weights or something like that; but after he is fully paid, what con-

nection has he, after it is unloaded at Chicago—when I say "he" I mean the Allied Grain Dealers Association of which he is an officer.

Mr. Root: Ask him that question. That isn't the question you asked him before.

Mr. Brown: No, of course, it isn't.

By Mr. Brown:

Q. Mr. Allen, didn't you, or in answer on redirect to your own counsel, say you had no connection, physical connection with the grain, barge grain after it is delivered at the Chicago elevator?

A. Not with the grain itself, no.

Q. If you have no physical connection with the grain itself after it is delivered at the Chicago elevator, what connection do you have with it?

A. The effect that the change in this——

Q. I didn't ask you about the effect; I asked you, what was your connection with it. Have you any control over it?

[fol. 1426] Mr. Root: No.

The Witness: No, I ain't got any control over it.

By Mr. Brown:

Q. Now, did you say you didn't have?

A. I have no control over it, no.

Mr. Brown: That is all.

Exam. Taylor: Any further cross-examination of this witness?

(No response.)

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Belnap: Mr. Examiner, Mr. Enoch asks that there be provided a witness to tell about the barge operations for handling this grain on the Illinois river. Now, Mr. A. L. Mechling is here. I do not represent Mr. Mechling but he has volunteered to take the stand and explain about his barge operations. I talked with him and shall ask him the questions about it. I call him to the stand.

Mr. Root: Mr. Examiner, before I drop out of here, I will have one witness in here tomorrow and of course I

will have the opportunity to put him on at that time. I don't want to foreclose myself.

Exam. Taylor: Mr. Mechling, take the stand.

Mr. Root: I want to offer Mr. Allen's exhibits, as supplemented by Mr. Brown's figures.

Exam. Taylor: Received.

[fol. 1427] Mr. Enoch: Did you make an offer just now?

Mr. Root: I make an offer just now.

Mr. Enoch: I want to object to the receipt of these exhibits in so far as they refer to rates of any transportation company moving on the water up here, because there isn't any evidence that there are any rates. If they are willing to concede that the items which refer to rates simply mean some phase of the cost of getting the grain up here, I have no objection to it.

Exam. Taylor: Any objection to that?

Mr. Root: The testimony has been that has been the cost. I understand on that basis, they would be admitted.

Mr. Oliphant: Mr. Examiner, might I inquire? Don't the rail exhibits show there was a rate of 4⅛ cents by water? Didn't they refer to it by "rate"?

Mr. Enoch: What is the point, Mr. Oliphant?

Mr. Oliphant: My point is that regardless of what kind of transportation company it is that issues that charge, it is a rate. Now, the rail carriers refer to the 4⅛ cent figure as the rate.

Mr. Enoch: That was all explained; that was taken from the protests.

Mr. Oliphant: But the fact remains, they call it a rate.

Mr. Enoch: And they simply called it what the protestants called it and it was shown that there were no rates [fol. 1428] and I don't want this to appear here as a rate.

Mr. Root: What, the 3 cent? It has been testified to as a rate and I think it will have to be accepted for whatever weight that carries.

Exam. Taylor: If you can't get together, the exhibits will be received subject to Mr. Enoch's objection.

(Exhibits 45 to 48, inclusive, Witness Allen, received in evidence.)

Mr. Enoch: Now, if your Honor please, Mr. Belnap said that I requested the appearance of some of these transportation lines. I might have done so but I don't recall

that I did. I simply inquired if they were going to be here. That is my understanding about that; am I right?

Mr. Belnap: No.

Mr. Enoch: I thought you would play fair with me. I didn't ask you to get any transportation company.

Mr. Belnap: I thought you did.

Mr. Enoch: I could get them here just as well.

Exam. Taylor: Are you going to take this witness?

Mr. Belnap: Yes, I will ask him.

Exam. Taylor: Proceed, Mr. Belnap.

A. L. Mechling was sworn and testified as follows:

Direct examination.

Q. Will you state your name?

[fol. 1429] A. A. L. Mechling.

Q. Where do you live, Mr. Mechling?

A. Joliet, Illinois.

Q. In what business are you engaged?

A. Engaged in business, barge line business on the Illinois River.

Q. Do you operate under a trade name in that business?

A. A. L. Mechling Barge Line.

Q. How long have you been in that business?

A. Well, I have been in the business probably for about 20 years.

Q. How long have you been operating as A. L. Mechling Bar- Line?

A. For the last ten years.

Q. About 1930?

A. That is right.

Q. And what is the general type of transportation services as to commodities carried that you have rendered?

A. Well, my principal interest in the barge line has been the towing of grain since 1930.

By Exam. Taylor:

Q. You mean towing of barges of grain?

A. Barges of grain.

By Mr. Belnap:

Q. With what equipment did you start in 1930?

A. In 1930, I had a small 60-horsepower towboat and no

barges. At that time, I towed barges that were owned by the Turnar-Hudnut people of Pekin and the barge of grain [fol. 1430] at that time was towed into Pekin and unloaded there.

Q. You say these were the barges of the Turnar-Hudnut Grain Company?

A. They were owned by them, yes, sir.

Q. Was that service rendered under the name of the Illinois River Packing Company, as far as Turnar-Hudnut was concerned?

A. As far as Turnar-Hudnot was concerned, yes.

Q. How much did you have invested in the business at that time?

A. Oh, I would say in the neighborhood of between three and four thousand dollars.

Q. When did you add to your equipment, first add to your equipment?

A. I first added another towboat in 1934. That was purchased from the grain company I was working for and I reconditioned the boat and put it back in that service.

Q. Still, at that time, you were just towing barges of grain?

A. That is right.

Q. Into Peoria?

A. Yes, sir.

Q. When did you start working or towing grain to Chicago?

A. In the fall of 1935, we made our first trip to Chicago.

Q. Still towing the barges of the shipper, is that right?

A. Yes.

Q. And at that time, were you towing for the Illinois River Packing Company as well as other shippers, or just [fol. 1431] for the Illinois River Packing Company?

A. At that time, I was just towing for the Illinois River Packing Company.

Q. When did you start barging grain into Chicago for shippers generally with your own barges, whether you owned them or leased them?

A. In 1936.

Q. What were the barges at that time, owned or leased?

A. They were leased.

Q. When did you commence to purchase barges?

A. Oh, I purchased the first barges, that is for grain, in 1937.

Q. And since that time, has your business been largely either towing barges of others or handling grain in your own barges into Chicago?

A. Yes, sir.

Mr. Enoch: Wait a moment. Read that, please.

(Question read.)

By Mr. Belnap:

Q. Do you still do any business into Peoria or Pekin?

A. I haven't in the last year, no.

Q. Prior to that time, did you do some?

A. Yes.

Q. Up until last year? Now, when did you add to your towboat equipment after 1937?

A. After 1937?

[fol. 1432] Q. Yes.

A. We built one towboat in 1938 and two in 1939.

Q. And did you rebuild and repower that towboat that you purchased from the Illinois Packing Company?

A. Yes, I repowered that in 1938.

Q. Did you in those years buy additional barges, 1938 and '39?

A. Yes, sir, I did.

Q. What is the equipment which you personally own at the present time?

A. Well, I own four towboats.

Q. What are their horsepower?

A. Two of them are 465, one of them 400 and one of them 260.

Q. How many barges do you own?

A. I have 17 barges.

Q. Of what capacity?

A. Well, two of them 400 ton capacity, two of them 500 ton capacity, 7 of them 850 ton capacity and six of them, 750 ton capacity.

Q. As to the equipment you just itemized, what is the book investment thereof?

A. About $300,000.

Q. Is there still some money due on part of this equipment?

A. Yes, sir.

Q. How many of the towboats are paid for?

A. There is two of them, the older ones are paid for.

Q. And the two that are not paid for, how much is still [fol. 1433] due on them?

A. About $50,000.

By Exam. Taylor:

Q. Each?

A. No, that is the two of them; $25,000 each.

By Mr. Belnap:

Q. How many of the barges are paid for?

A. There is ten of the barges that are paid for.

Q. And on the other seven, how much do you still owe?

A. Oh, between 50 and 60 thousand dollars, I don't know exactly.

Q. The amounts that you still owe on the equipment, you make payments on that monthly, do you?

A. Yes, sir.

Q. You have a net worth of approximately $200,000?

A. That is right.

Q. And that has been built up entirely out of the towing of grain or barging of grain on the Illinois River?

A. I wouldn't say grain only. In the past year I have had some of them chartered out and other lines of towing, so I wouldn't say it has been built up entirely of grain. However the biggest part of it has.

Q. You are not a corporation?

A. No, sir.

Q. Do you have a certificate of public convenience and necessity from the Illinois Commerce Commission?

A. No, sir.

Q. Do you file any rates with that commission or make [fol. 1434] annual reports to that commission?

A. No, sir.

Q. Do you file any rates with or make annual reports to the Interstate Commerce Commission?

A. No, sir.

Q. Have you been advised, Mr. Mechling, by the admiralty lawyer who represents you that in the business you are doing, you are not required to either file rates or obtain certificates or make reports about which I have asked you?

Mr. Enoch: Just a moment, I object to that.

Exam. Taylor: On what ground?

Mr. Enoch: I don't see what materiality that has. The Commission will be the best judge as to whether or not, if the question is material, this gentleman has complied with the laws of Illinois, when and if operating on the Illinois River.

Mr. Belnap: No question about that, Mr. Examiner. I am not inquiring of him whether he should do it. I mean, acting on the advice of the admiralty lawyer who represents him.

Mr. Day: I don't see the relevancy of that.

Mr. Enoch: I don't understand there is any question of criminal prosecution, as far as Mr. Mechling is concerned.

Mr. Belnap: Criminal prosecution about what?

Mr. Enoch: At the institution of the Illinois Commerce Commission; failing to comply with the Illinois law.

Mr. Belnap: I am asking him if he has had legal advice [fol. 1435] that he doesn't have to do these things.

Exam. Taylor: Read the question.

(Question read.)

Exam. Taylor: He may answer.

The Witness: I have had legal advice to that effect.

Mr. Belnap: To that effect?

A. Yes.

Q. Mr. Mechling, if any federal or state statutes require you to have certificates, file rates or make reports, are you willing to comply with that?

Mr. Enoch: I object to that. That isn't going to bear at all on what has been done in the past, or in so far as the propriety of applying these proportional rates out of Chicago on outbound ex-river grain; doesn't have a thing to do with it.

Mr. Belnap: I should think they would like to know what this man's business is and what he is willing to do.

Exam. Taylor: The witness may answer.

The Witness: Will you ask the question again, please?

Exam. Taylor: Read the question.

(Question read.)

The Witness: I am.

By Mr. Belnap:

Q. You are willing?

A. Yes, sir.

Mr. Belnap: Now, Mr. Examiner, I have some pictures of Mr. Mechling's equipment. He brought them here; he has no copies. He is quite willing to supply these so that they [fol. 1436] can be made part of the record, but we will not supply copies. He tenders these exhibits only in the event counsel will waive copies.

Exam. Taylor: Pass them to counsel; see what you have.

Mr. Belnap: They are pictures of towboats.

Mr. Enoch: I object to that. What bearing will it have? Will counsel explain that, please, before he insists upon the introduction of those pictures?

Mr. Belnap: I thought you would be interested in the man's business.

Mr. Enoch: I am if you and Mr. Mechling come over to my room——

Mr. Belnap: I will be glad to.

Mr. Enoch: And go into this thing in detail.

Mr. Belnap: I recall Mr. Cole's witness case some dispar-ing remarks on the type of equipment that was used to transport grain on these rivers.

Mr. Cole: Not disparaging.

Mr. Belnap: I thought they were quite disparaging, and I thought the Commission would like to look at the pictures.

Mr. Day: You are asking us to waive the Commission's rules?

Mr. Belnap: That is right.

Mr. Day: If you are so anxious to get the pictures in——

Mr. Belnap: If there is a refusal to waive, I will with-[fol. 1437] draw it.

Mr. Day: Well, withdraw them.

Mr. Belnap: You refuse to waive?

Mr. Day: Yes.

Mr. Belnap: I under those circumstances withdraw the offer of the exhibits, Mr. Examiner.

By Mr. Belnap:

Q. Have you here, Mr. Mechling, a true and correct copy of one of your bills of lading?

A. I have.

Mr. Belnap: Mr. Examiner, as to that, I have no copies available. I would like to offer it as an exhibit but with leave to supply copies to the parties.

Mr. Root: Your Honor, that is the thing you requested me, to get a copy for the record.

Exam. Taylor: Show the exhibit to counsel.

Mr. Belnap: I can't make a proper offer under the rules, if they refuse to waive copies.

Mr. Day: You say you are going to furnish copies of this; and I am not objecting to that procedure.

Exam. Taylor: It may be marked Exhibit 49, with the understanding that everybody, including the Examiner, parties will be given a copy.

Mr. Belnap: Very glad to.

Exam. Taylor: Well, it will be known as Exhibit 49.

(Exhibit 49, Witness Mechling, received in evidence.)

[fol. 1438] By Mr. Belnap:

Q. Mr. Mechling, as to the 17 barges which you own, are they confined exclusively to the barging of grain or do you handle any other commodities?

A. Well, I have handled some other commodities in them. However, I don't do it as a general practice, but I have handled some steel in them.

Q. Ordinarily, however, you use them exclusively for the barging of grain?

A. I do ordinarily, yes.

Q. When grain is barged in those 17 which you own, you use your own towboats?

A. Yes, sir.

Q. Do you also devote your towboats to the towing of grain in barges owned by others?

A. I do.

Q. That is for the Allied Barge Corporation?

A. Yes, sir.

Q. They have four barges, I understand?

A. Yes, sir.

Q. Are there any other companies for which you have—any other shippers for which you have towed grain in barges owned by the shippers?

A. No, I haven't towed any other barges owned by shippers. I have towed some barges owned by other barge lines.

Q. What other barge lines?
A. John I. Hay.
[fol. 1439] Q. Anybody else?
A. No. That is merely done as an interchange between the two barge lines, however.

By Exam. Taylor:

Q. By "interchange," you mean through reciprocity?
A. That is right. To take advantage of the boat that is in that territory. It isn't done very generally.

By Mr. Belnap:

Q. The rates which you assess when you barge grain, Mr. Mechling, are they shown in any printed document?
A. No, sir.
Q. In the form of a tariff?
A. No, sir.
Q. Do you have, however, a basis of rates which you make generally known to the shipping public?
A. I do.
Q. Are those rates named in cents per hundred pounds?
A. Per hundred pounds, yes, sir.
Q. I am speaking about rates for the handling of grain where you perform the complete transportation services.
A. Yes.
Q. Both the barge and towboat.
A. Yes, sir.
Q. Are the rates which you name applicable on corn, wheat, soy beans and oats?

Mr. Enoch: Just a moment, if he has this document——
[fol. 1440] Mr. Belnap: He said he didn't have a document.
The Witness: I don't have the document.

By Mr. Day:

Q. You quote these out of your head?
A. No, I don't quote them out of my head. Well, more or less, yes; I know what they are.

By Mr. Belnap:

Q. So does everybody else, don't they, Mr. Mechling?
A. Generally, I think.

Q. I asked you, are these rates applicable in the same amount in cents per hundred pounds on corn, wheat, soy beans and oats?

Mr. Enoch: I object to that. If he has any rates—first, let's see if he has any rates, and if he has any, what are they and on what do they apply; what is the service?

Mr. Belnap: Same question I ask, where they apply.

Mr. Enoch: You get the point.

Mr. Belnap: I am going to ask him all that, Mr. Examiner, but I have got to ask him something first, so I am going to ask him to what they apply; may I?

Exam. Taylor: Proceed.

The Witness: May I answer that question?

Mr. Day: You mentioned several kinds of grain. You did not include steel in there. He said he handled some steel and other commodities.

By Mr. Belnap:

Q. Let's comply with Mr. Enoch's suggestion. He would rather have you name the rates first.

[fol. 1441] Mr. Enoch: My request again?

By Mr. Belnap:

Q. What rates on grain do you maintain in Chicago from Morris, Seneca, Ottawa and LaSalle?

Mr. Enoch: I object, because there is no evidence here and no testimony by this witness that he maintains any rates.

Mr. Belnap: I ask him what rates he maintains.

Mr. Enoch: If you want to go into that question, let's see how many contracts out he has, in which there is some charge—I assume that he levies against the person or to the person for whom he performs the service. What is the use of talking here in a way we would talk as if these so-called figures were published in what is commonly understood as tariffs?

Exam. Taylor: He says he hasn't any tariffs. He says he knows these rates; he can tell them right out of his head.

Mr. Belnap: Let me ask him this question:

By Mr. Belnap:

Q. Mr. Mechling, have you throughout the past year maintained and made known to the trade generally rates

on grain in cents per hundred pounds from landings on the Illinois River to Chicago?

A. I have.

Q. Now, can you tell me what that rate has been during this past year from Morris, Seneca, Ottawa and LaSalle?

A. That rate has been 2¾ cents per 100 pounds.

By Mr. Day:

Q. On what?

A. On all grains.

[fol. 1442] Q. That is oats, beans, corn?

A. All grains and beans.

Q. Wheat?

A. That is right.

Q. Rye?

A. That is right.

Q. Barley?

A. That is right.

Mr. Belnap: I wanted to ask him that but I am much obliged, Mr. Day.

By Mr. Belnap:

Q. Now, from Peru to Chicago.

A. Peru to Chicago is 3¼ cents.

By Exam. Taylor:

Q. A hundred pounds?

A. A hundred pounds.

By Mr. Belnap:

Q. All the rates you are giving me now are per 100 pounds?

A. That is right. But I would like the privilege, if I can, of explaining that rate.

By Mr. Enoch:

Q. What is that?

A. I say I would like the privilege of explaining that rate, if I can.

By Mr. Belnap:

Q. All right, please explain it.

A. There isn't any house at Peru and the loadings there are loaded through more or less of a temporary arrange-

ment, and I charge half a cent higher there because the [fol. 1443] barges are held longer, than I do at LaSalle, which is practically in the same territory; but I wanted to say why that was. That is at Peru.

Q. That is a half a cent per hundred?
A. That is right.
Q. Now, from Hennepin to Chicago.
A. 3 cents.

By Exam. Taylor:

Q. These rates or charges are all in your own barges?
A. All in my own barges.

By Mr. Belnap:

Q. From Henry, Lacon and Chillicothe?
A. That rate is 3½ cents a hundred.
Q. How much from Peoria and Pekin?
A. 4 cents.
Q. How much from Havana?
A. 4½.

Mr. Enoch: Mr. Belnap, when you are talking about rates, mentioning Peru, Hennepin, these other points, do you refer to the rates which the witness described as those he takes out of his head?

Mr. Belnap: I refer to, as the witness described as taken out of his head, at times throughout the past season.

Mr. Enoch: When you ask him about maintaining rates?

Mr. Belnap: He has no published document in which these rates are shown, Mr. Enoch; he said that.

Mr. Enoch: When you asked about maintaining rates, [fol. 1444] do you refer to the rates which he says he takes out of his head?

Mr. Belnap: I don't know what kind of a question you are asking me.

Mr. Enoch: I can't understand how a man can be asked about maintaining rates when he has just previously answered counsel that all rates which he assesses he takes out of his head.

Mr. Belnap: I am sorry Mr. Enoch can't understand it. He has said for the past year and I am going to develop about the history of the rates. "Maintain", as I understand the word, means put in effect for a period of time,

have in effect for a period of time; and that the sense in which you answered my questions, Mr. Mechling?

The Witness: Yes.

By Exam. Taylor:

Q. The answer was yes?

A. Yes.

Mr. Belnap: Yes.

By Mr. Belnap:

Q. Are the rates you have just named, Mr. Mechling, lower than those which you assessed when you first started this business of barging grain to Chicago back in 1936?

A. Yes, sir, they are some lower.

Q. Do you recall what you charged by way of freight rate on this grain which you barged when you started?

Exam. Taylor: From what point?

By Mr. Belnap:

Q. Morris, for example.

[fol. 1445] A. When we started barging grain from Morris, we charged 4 cents a hundred.

By Exam. Taylor:

Q. In your barges?

A. In our barges.

Mr. Belnap: All these questions until I indicate, Mr. Examiner, are going to be asked about the services of his own barges; and I will go into that other situation, however.

By Mr. Belnap:

Q. And from Peoria?

A. Peoria was 5 cents at that time.

Q. And Havana?

A. 6 cents.

Q. What has brought about the reduction in the rates up the river at the present time?

A. Well, when we started, we had very small barges and the amount of grain was considerably smaller than it is now. That is, the amount of grain offered. And since

that time, the river has been improved to where there are better operating conditions, we are able to handle bigger tows, with the improved equipment, and of course the volume has a great deal to do with the actual cost of the transportation.

Q. Are your present rates profitable?

A. They are.

Q. How many people do you now employ?

A. 35.

Q. Now, will you describe your towing rate situation.

A. You mean in other peoples' barges?

[fol. 1446] Q. In other peoples' barges.

A. The only place where I do that to any extent is with the Allied Barge Corporation, and I have a rate with those people of a cent a hundred--or a cent a bushel.

Q. On what grains?

A. On all grains except oats and 8/10th cents a bushel on oats.

Q. That cent a bushel is approximately a cent and three-quarters per 100 and the 8/10ths is approximately 1.4 per 100, isn't it?

A. No, that isn't—oh, a bushel, you say?

Q. Yes, on corn. For instance, in corn, the cent a bushel is how much per hundred?

A. Per hundred?

Q. Yes.

A. I think it is about a cent and seven-eighths.

Mr. Enoch: It is all set up in your individual contracts, isn't it?

Mr. Belnap: I will ask him about these things, Mr. Enoch; I don't need your help.

Mr. Enoch: I object to any further questions, if these arrangements are set up in contracts, without having the contracts.

Mr. Belnap: I will ask him about the contracts, if you will let me get the other.

Mr. Enoch: I know, but you have gone ahead so far without saying anything about contracts.

[fol. 1447] Mr. Belnap: I can't cover everything at once. He is going to cover all the detail in his business.

Mr. Enoch: I object to any further questions, Mr. Examiner, about so-called rates and so forth if the terms under which these services are performed are set up in individual contracts.

Exam. Taylor: I will sustain that.

Mr. Belnap: May I hear that objection?

(Record read.)

Mr. Belnap: Mr. Examiner, would you withhold your ruling until I can say something?

Exam. Taylor: I will.

Mr. Belnap: I wanted to go completely into this man's business and his arrangements with shippers. Mr. Enoch has objected and predicated his objection, if they are set up in contracts, there is no evidence in the record. There will be before I have finished as to whether this man has any contracts except as to the Allied Towing Company. There is some evidence about that.

Exam. Taylor: That is the only thing he——

Mr. Belnap: That Mr. Enoch objected to.

Exam. Taylor: Yes. It was the contracts that he has with the Allied people that Mr. Enoch wants put in the record. If there are any rates stated in those contracts, they are the best evidence.

Mr. Belnap: Is that the objection, Mr. Enoch, just to [fol. 1448] the towing?

Mr. Enoch: Yes, if that was covered by a contract, I understand it is, I think you ought not refer to those so-called rates for services unless the contract is in evidence, and if these so-called rates to which you have referred——

Mr. Belnap: This is the towing.

Mr. Enoch: In connection with services performed, say for the Norris Grain Company or any other receiver of freight are covered by written contracts, I don't think that that rate should be put in evidence until the contract is also in evidence, because we don't want the rate questioned.

Mr. Belnap: I understand your ruling is, you will not consider evidence on any rates which are covered by specific contract unless the contract is in evidence?

Exam. Taylor: That is correct.

Mr. Belnap: I will proceed on that understanding, sir.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. Does the Co-operative Allied Grain Corporation also utilize your barge service when you provide the equipment?

A. There are times when they do.

Q. That has happened a number of times, has it not?
A. Yes.
Q. And when that happens, what rate do you charge?
A. I charge—in that case, I charge 2¾ cents a hundred; [fol. 1449] when they use my barge.

Mr. Enoch: I don't think counsel is complying with the ruling, if that is covered by contract.
The Witness: It isn't covered by contract.
Mr. Day: It is certainly contradictory to what the Allied people testified to.
Exam. Taylor: Let the record speak for itself about that.

By Exam. Taylor:

Q. Is this last statement made with respect to the movement of grain under contract?
A. Will you ask that again, please?
Q. This last statement you made in reply to Mr. Belnap's question. Is that with reference to transportation made under a contract?

By Mr. Belnap:

Q. That is the 2¾ cent rate.
A. That is in our contract with the Allied Grain Corporation; when they use our barges.
Mr. Belnap: I respect your ruling; this is not to be considered. I will get to these contracts in a minute. I understand that was your ruling and I am complying with it. We have already got evidence the 8/10ths of a cent and the cent in here. I understand those are to be disregarded as evidence in this case if they are in a contract, is that correct?
Exam. Taylor: That is correct.
Mr. Belnap: And I will observe that ruling in briefing the case, naturally.
Mr. Cole: Mr. Examiner, Mr. Belnap now two or three [fol. 1450] times has said, "Just a minute, I am going to get to these contracts; just a minute, I am going to get to these contracts." I think he has filled up about ten pages with information we asked be withheld until he got the contracts first.
Mr. Belnap: If there are any.
Mr. Cole: Now, see, right now he says, "If there are any contract." He is getting his whole record made be-

fore he divulges if there are any contracts. We maintain if there are any contracts, the contracts are the best evidence, so necessarily we are going to have the contract information first.

Mr. Belnap: I will get in the order in which I was going to put it in.

Exam. Taylor: I wish you would, Mr. Belnap.

By Mr. Belnap:

Q. Do you presently have a contract with the Allied Grain Corporation?

A. I do.

Q. That is the contract to which the previous witnesses testified about?

A. That is right.

Q. You have been here and heard their testimony, have you not?

A. I do not recall being here when that testimony was given.

Q. Do you presently have a contract with anybody else?

A. No, sir.

Q. You contend your bill of lading is a contract?

A. That is right.

Q. Which you issue on individual shipments?

[fol. 1451] A. That is right.

Q. And a copy of it has been made a part of the record.

Exam. Taylor: Just on grain moved in his own barges.

Mr. Belnap: Just on grain moved in his own barges. Is that clear enough for you?

Mr. Cole: Not quite.

Mr. Belnap: You get him on cross in a minute.

By Mr. Belnap:

Q. Mr. Mechling, are you willing to handle grain for any shipper from any of these landings at the rates and charges you have recited that you maintain during this past year?

Mr. Enoch: I object to that.

Exam. Taylor: On grain in his own barges.

Mr. Belnap: On grain in Mr. Mechling's barges.

Exam. Taylor: Yes.

Mr. Belnap: Yes.

Mr. Day: I think it is irrelevant and immaterial. I join in the objection.

Exam. Taylor: On what ground?

Mr. Day: It is irrelevant, what he is willing to do. The question and the only question before this Commission conceivably is how has he been operating, how is he operating today; not what he is willing to do. The Commission can't decide this case on promises.

Exam. Taylor: Will you reframe your question to meet [fol. 1452] that objection, Mr. Belnap.

By Mr. Belnap:

Q. Have you been willing to handle grain for any shipper who would tender it to you during this past year at the rates that you stated as rates per hundred pounds for complete transportation services?

Mr. Day: That doesn't meet the objection. I object to it.

Exam. Taylor: First, I should think the question would be, have you done it?

Mr. Day: That is it.

By Mr. Belnap:

Q. Have you, Mr. Mechling?

A. I have.

Q. Every shipper who offered you grain?

A. I have.

Q. Have you, in fact, since you have been in this business, served every river bank elevator on the river at these Illinois River landings between Havana and Chicago, or are there some you haven't served?

A. I think there is one elevator—let me see. There is only one elevator that I have any question about saying yes, and that is the Continental Elevator at Havana. I don't know whether we have towed out of there with our own barges or not, but every other elevator, we have.

Q. Will you take each of these landings up in turn and tell the shippers for whom you have transported grain?

[fol. 1453] A. You mean the different elevators?

Q. Yes, the elevators you have served, who the shippers are from those points.

A. Since 1930, you mean? That is, since I started towing grain?

Q. Let's take the last couple of years. Let's get up to a recent period here.

A. Well, the last couple of years, I have served the Norris Grain Company at Havana and I have served the Dewey Grain Company at Pekin, that is the W. W. Dewey Grain Company and the Norris Grain Company at Pekin; Continental Grain Company at Peoria; the Norris Grain at Chillicothe and the Terminal Grain Company at Lacon.

By Mr. Enoch:

Q. What is that last one?

A. Terminal Grain Company. That grain has been handled out of the Lacon elevator for both the Continental and the Norris Grain Company. They buy it from the Terminal Grain Company and I tow it for whoever orders a barge down there.

By Exam. Taylor:

Q. In your own barge?

A. In my own barge. I just wanted that correct. Norris Grain Company at Henry——

By Mr. Cole:

Q. Henry?

A. Henry. Norris Grain Company at Hennepin, and the Continental Grain Company at LaSalle. Norris Grain Company at Ottawa. Allied Grain Corporation at Seneca; [fol. 1454] Allied Grain Corporation at Morris and Finnegan Grain Corporation at Morris.

By Mr. Belnap:

Q. Outside of the Havana elevator or the Continental Grain Company, all of the elevators are on the Illinois River from which grain can be discharged from the elevators?

A. There are two more barges——

Q. Two more barges?

A. Or two more elevators; one at Naples and one at Montezuma. That grain so far has always gone down the river and not come to Chicago.

Q. Now, have you also handled grain for shippers who had no elevator facilities?

A. I have in one or two occasions.

By Mr. Enoch:

Q. Will you tell us when that was?

A. The one or two occasions?

Q. Yes.

A. I can't just give you the date. It was this fall. I would say along in the early part of November, I handled a carload out of Depue for a man by the name of Seward. He built a little landing there. And earlier in the summer, I would say along in July, I handled a barge load out of Seneca.

By Mr. Belnap:

Q. Who was that for?

A. I was just trying to—Hogan.

By Mr. Root:

Q. Joe Hogan?

A. Yes. I understand he furnished the grain. I don't know just how that was handled. I understand he furnished the grain.

[fol. 1455] Q. It was loaded into your barges?

A. It was loaded into our barges.

Q. And through an elevator?

A. Loaded from the bank into the barges through a temporary loading.

Q. Has your barge line handled the bulk of grain brought into Chicago this last year by barge?

A. I would say they have, yes, sir.

Q. You specialize in that business, do you, Mr. Mechling?

A. Yes, sir, that is practically——

Q. There are some other barge companies who handle some grain in here?

A. Oh, yes, there are some other.

Q. Would you identify for the record who they are and something about the company, how big a company, how large a company it is.

A. John I. Hay Company have handled grain on the river for the past two or three years. They haven't specialized in it the same as I have. They have handled it along with their regular towing arrangements, and they tow from New Orleans up to Chicago. They have a long-distance towing program. And the Lawrence Transportation Company have

handled grain both from Pekin and the Hennepin canal points into Chicago, and on several occasions this grain goes to Pekin, I think, from Hennepin canal.

[fol. 1456] Q. How about the Waterway Transportation Company at St. Louis?

A. The Waterway Transportation Company at St. Louis do some. They towed some grain up here this fall, I don't know how much. I know they towed several barges into Chicago.

By Mr. Enoch:

Q. From St. Louis?

Mr. Day: From St. Louis?

A. From St. Louis; I understand they came from St. Louis. I don't have any particular connection with them but I understand that is where it came from.

By Mr. Belnap:

Q. Are your rates the same or different——

Mr. Day: Just a minute, has he finished the answer to your last question?

Mr. Belnap: I thought he did.

The Witness: I have, yes, sir.

By Mr. Day:

Q. You have given us all these barge lines operating there?

A. Yes, sir.

Q. And Mr. Belnap in his question asked for you to identify them for us. Have you done that?

A. That is all the barge lines I know of that are towing grain into Chicago. There are some other barge lines that are towing grain down the river; I don't know whether you want that or not.

Q. Which of these barge lines are Norris Grain Company?

A. None of them.

[fol. 1457] Q. You didn't mention Norris Grain Barge Line.

A. They don't have a barge line.

Q. They don't have their barges?

A. They have one barge they have used in connection—the man has been using in connection with mine.

Q. Do they give it a name?

A. IRP No. 3.

Q. Norris Grain IRP 3?

A. No, IRP No. 3 is all that there is on the barge.

Q. What does the IRP stand for?

A. Illinois River Packing Company.

Q. That is the name they operate under?

A. Yes, and that barge has been leased to me and I use it in my regular operation, but it is really under lease to me; in all sense of the word, I think, as far as the operations are concerned, my barge.

Q. Norris doesn't have anything else——

A. No.

Q. In the way of river equipment?

A. No.

By Exam. Taylor:

Q. Is that on- of your 17?

A. No.

Q. Is that additional?

A. That is an additional barge. These 17 I mentioned are barges I own.

[fol. 1458] By Mr. Day:

Q. How about Continental?

A. What about that?

Q. Continental Grain Company. Do they have barge operation?

A. They own no barges that I know of.

Mr. Belnap: You just asked if he had answered my question, didn't you?

Mr. Day: Yes, sir, your question contemplated that he did tell us about these barge lines.

Mr. Belnap: If they don't have one, he can't tell you about them, Mr. Day.

The Witness: I did tell you all the barge lines that are operating on the Illinois River.

Mr. Belnap: Wouldn't you just as soon wait for cross-examination?

Mr. Day: If you would prefer that. I thought as long as all this connected, it would be convenient——

Mr. Belnap: Then you go ahead if you wish.

Mr. Day: No, I would just as soon wait. Go ahead.

By Mr. Belnap:

Q. Does the John I. Hay Company maintain the same rates you do, Mr. Mechling?

Mr. Enoch: I object to that unless he knows about whether the John I. Hay Company has any rates.

By Mr. Belnap:

Q. Do you compete with John I. Hay Company, Mr. Mechling?

A. Yes, sir.

Q. Do you make it your business to find out what your [fol. 1459] competitor is charging?

A. It is my understanding that they charge the same rates as I do.

Mr. Enoch: I move that the answer be stricken out.

Mr. Belnap: Mr. Examiner, I can't quite get—he is competing with a company and he knows what his competitor is doing.

Mr. Enoch: No objection to that. There is no objection to that answer.

Mr. Belnap: And he understands that the rates they charge——

Exam. Taylor: The answer will be allowed to stand for such value as it may have. Off the record.

(Discussion outside the record.)

Mr. Belnap: You may cross-examine.

Mr. Cole: May I ask? I have only got a few.

Exam. Taylor: Mr. Cole:

Cross-examination.

By Mr. Cole:

Q. Mr. Mechling, among the people that you testified that you hauled for were Norris Grain Company, as I took it down, Dewey, is that the right name?

A. W. W. Dewey Company.
Q. W. W. Dewey Company?
A. W. W. Dewey Company.
Q. At Peoria, Continental Grain Company?
A. That is right.
Q. The Terminal Grain Company, is that it?
A. I explained in that that I didn't tow directly for the Terminal Grain Company, but it came out of their house.
[fol. 1460] Q. Do you know who it was for?
A. Yes, it was for both Norris Grain and Continental.
Q. That is the Terminal was simply the house you got it out of?
A. That is right.
Q. But that was for either Continental or Norris?
A. That is right.
Q. You transferred for Norris Grain Company, Dewey's Grain Company——
A. W. W. Dewey Grain Company.
Q. Continental Grain Company, Allied—what is the name of that?
A. Allied Grain Corporation.
Q. And the Finnegan Grain Corporation?
A. That is right.

Exam. Taylor: Isn't it the Allied Co-operative Grain Corporation?

By Mr. Cole:

Q. This Allied Grain Corporation, is that what you referred to as the Allied——
A. I think we had better straighten you out. The contract that I have is with the Allied Barge Corporation.
Q. So you transport for the Allied Barge Corporation?
A. I think you had better straighten that out right now so there won't be any misunderstanding.

By Mr. Belnap:

Q. You have no contract at all with the Allied Grain [fol. 1461] Dealers Corporation?
A. No, sir.
Q. Just the barge corporation?
A. That is right.

By Mr. Cole:

Q. Now, is there any other company or firm that has been using water transportation along the Illinois River other than these five firms that we just referred to?

Exam. Taylor: That is, that is being handled by his company.

Mr. Cole: Oh, no, that he knows about; whether he has handled it or not.

Exam. Taylor: I want to get that straight.

Mr. Belnap: Have you got Hogan down there?

Mr. Cole: I got Norris, Dewey, Continental, Allied and Finnegan.

Mr. Belnap: He talked about Hogan and Seward.

Mr. Cole: Hogan and Seward.

Mr. Day: He said he handled one load——

Mr. Cole: Wait a minute, I will get that.

By Mr. Cole:

Q. In your experience there along the river, you are in the barge business?

A. Yes, sir.

Q. Is there anybody else that you know of that is handling grain from the Illinois territory to Chicago, shipping any except Norris, Dewey, Continental, Allied, Finnegan, Hogan [fol. 1462] and Seward?

A. Now, there are times when grain will be bought by Cargill, for instance.

Q. By Cargill?

A. By Cargill. And they will buy, for instance, a couple of barge loads of grain, maybe out of Morris elevator at Pekin.

Q. You mean when Cargill buys grain, will Cargill buy grain from either Norris, Dewey, Continental, Allied or Finnegan?

A. Yes.

Q. That is it.

A. And they will wire us they want to go down there and get that barge of grain.

Q. Yes.

A. They may wire me, they may wire John I. Hay or anybody that has got barges. It is up to them then to provide the towing of that grain.

Q. I understand. Now, this Mr. Hogan that shipped some grain down the Illinois River, you said he was one of the men that loaded your barge or one of the barges from a bank where there was not any elevator?

A. That is right.

Q. Did you ever haul any for Mr. Hogan? Other than that one barge load, I mean?

A. No.

Q. Do you know whether Mr. Hogan has ever shipped [fol. 1463] any other than that one barge load?

A. I don't know.

Q. This Mr. Seward, is he another man who loaded from the bank?

A. That is right.

Q. Have you ever heard of Mr. Seward shipping any other over the Illinois waterway?

A. I haven't heard of it.

Q. Now, if we take Mr. Hogan and Mr. Seward away——

Mr. Belnap: I don't want you to do that, though.

Mr. Cole: Well, just for the minute.

By Mr. Cole:

Q. Now, of the remaining five, Norris, Dewey, Continental, Allied and Finnegan, how do they rate in the amount of grain handled for each one of the five? Which would you say handled the most?

Mr. Belnap: Now, Mr. Examiner, we are getting into a relation between the carrier and those he serves.

Mr. Cole: No.

Mr. Belnap: It seems to me we are.

Mr. Cole: I am not asking these questions at all for that, Mr. Examiner, and I think the Examiner will realize why I am asking these questions.

Mr. Belnap: You haven't explained it to me.

Mr. Cole: You know blessed well I am. Shall I explain?

Exam. Taylor: Do you require an answer to that?

Mr. Belnap: I would like to have it explained. I don't [fol. 1464] know whether Mr. Mechling, as I said, wants to talk about his relation between himself and the people he does business with or not, how much he does for this and how much he does for that.

Mr. Cole: I am not talking about how much he does for this or that.

Mr. Belnap: I would like to have the purpose of the question explained.

Mr. Cole: The purpose of the question is just this—may I explain off the record so as not to clutter it up?

Exam. Taylor: Yes, off the record.

(Discussion outside the record.)

Exam. Taylor: Proceed.

By Mr. Cole:

Q. Now, Mr. Mechling, of the five shippers, would you give me the list in the order of their substantial movement; naming first the one that has the most substantial shipments.

Mr. Belnap: Mr. Cole, wouldn't it suffice for you purposes for him to say which are substantial, which are not; if there are some which aren't substantial shippers. I don't think it has any relevancy at all, Mr. Examiner.

By Mr. Cole:

Q. Do all of these five ship in approximately the same quantities over the period of a year?

Mr. Brown: To Chicago.

By Mr. Cole:

Q. To Chicago.

A. Will you read those particular five that you refer to?

[fol. 1465] Mr. Belnap: You left out Cargill, I think.

By Mr. Cole:

Q. I am referring to Norris, Dewey, Continental, Allied and Finnegan. Do all of those ship about the same quantity in the course of any period, say like a year or a season?

A. Well, I would say that they—have you got Cargill in there?

Q. I have got Cargill over on the side.

A. You haven't got him in the——

Q. Not in the five, no.

A. I would say that they are all pretty much substantial shippers, yes.

Q. Now, out of the five, which one ships the smallest amount?

Mr. Enoch: You mean to Chicago, for instance?

Mr. Cole: Oh, yes, everything I am talking about, I am talking about Chicago.

Mr. Belnap: Mr. Examiner, I am objecting to the question. I don't think which is the biggest and which is the least bears on any issue of the case; and further, the witness is obviouslly not in a position to state as to the quantities handled for any shipper, other barge lines. So a picture for his own line would certainly not be helpful, even if it was important to develop this information Mr. Cole is going after.

Mr. Cole: For the benefit of the record, may I explain this, as I explained off the record. My purpose here, as you [fol. 1466] can well see, is to attempt to establish just what public interest we have. I am trying to see how wide a public interest we have, and I finally have it limited to the fact that there are five shippers on the Illinois waterway; Norris, Dewey, Continental, Allied, Finnegan, plus a possible sixth, Cargill, who, the witness has told me, handled his goods from either one of the other five. He only moves the goods of the other five.

Mr. Belnap: You misunderstood him.

Mr. Cole: I will go back and be sure. Now, what I am trying to do is to see how substantial each one of these is.

Exam. Taylor: Well, to save time, the witness may answer if he knows.

The Witness: I can't say just the relative amount that each one shipped and I can't say offhand which one shipped the least.

By Mr. Cole:

Q. Well, would you say that of those five, Norris, Dewey, Continental, Allied and Finnegan, they would ship approximately the same amount of grain over a period of time and all of that would be substantial, each of them would be substantial individually?

A. Each one would be a substantial amount; not just a few barge loads but I mean——

Mr. Enoch: I wonder if the witness understands you mean movement of grain to Chicago.

[fol. 1467] By Mr. Cole:

Q. Do you understand every question I asked you from the time I started asking you questions referred to movement to Chicago?

A. Yes, sir.

Q. Now, this Cargill we referred to, did you tell me or did I misunderstand that Cargill when handling grain was buying that grain from one of the five firms I referred to?

A. I don't know how that transaction is handled.

Q. You don't know?

A. There isn't any reason why I should or any way that I would know. We just have orders to go down there and get grain and take it some place.

Q. Have you handled much grain for Cargill?

A. Not a great deal, no.

Q. Does Mr. Cargill handle much grain along the river?

A. I would say he handles quite a little, yes.

Q. Would you say Mr. Cargill handled the same substantial quantity that was handled on the river by Norris, Dewey, Continental, Allied and Finnegan?

Exam. Taylor: Combined or individually?

By Mr. Cole:

Q. Individually. Did he handle as much as any one of those five firms?

A. Oh, I would say he handled about as much as Dewey did.

Q. You say he handled about as much as Dewey did?

A. Of course, I don't want to be quoted as being any authority on that because I don't know. I don't tow it all.

[fol. 1468] Q. Now, in your towing experience, to back up to be sure that I haven't overlooked anything, have you heard now of any other shipper of grain on the Illinois watersay moving grain to Chicago outside and beyond these people, Norris, Dewey, Continental, Allied, Finnegan, Hogan, Seward and Cargill?

A. Not in recent years, no.

Mr. Cole: I thank you. That is all I have.

Exam Taylor: I think we had better adjourn. Adjourn at this time until 9 o'clock tomorrow morning.

(Witness excused.)

Mr. Belnap: Do you want Mr. Mechiing back in the morning?

Exam. Taylor: Yes, he is not excused. We haven't finished with him.

9 o'clock tomorrow morning, same room.

(At 4:50 o'clock P. M., January 18, 1940, hearing adjourned to 9 o'clock A. M., January 19, 1940.)

[fol. 1469]

Morrison Hotel,
Chicago, Illinois,
Friday, January 19, 1940.

Met pursuant to adjournment at 9:00 o'clock a. m.
Before: R. G. Taylor, Examiner.
Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right, gentlemen: come to order.

A. L. Mechling, resumed.

Direct examination (continued):

Exam. Taylor: Had you finished, Mr.——

Mr. Belnap: Before Mr. Enoch inquires, there is one matter in Mr. Mechling's testimony which should be straightened out in the record; and that is as to the barge which he said is under lease to him, which he referred to as being owned by Norris. In making a statement similar to that, Mr. Mechling, did you correctly state the fact?

The Witness: No, that was wrong; the barge is actually owned by the Illinois River Packet Company.

By Mr. Belnap:

Q. And it is under lease to you?

A. That is right.

[fol. 1470] Q. So far as that barge has been used in the transportation of Norris grain, you have assessed, have

you not, your regular rate that you have described in the record?

A. That is right. That barge is chartered to me; the same rate that I charge for my barge is charged on that barge; just merely the fact that they were not using it when I had an opportunity to use it.

Mr. Belnap: That is all.

Cross-examination.

By Mr. Enoch:

Q. Who owns the Illinois River Packet Company?

A. Well, that is owned by a group; I cannot tell you just who owns that, or who the officers are.

Q. Who are some of the officers?

Mr. Belnap: Do you know, Mr. Mechling?

The Witness: No, I don't know.

Mr. Day: He was going to tell, until Mr. Belnap headed him off.

By Mr. Enoch:

Q. Who owns the Illinois River Packet Company?

A. I don't know.

Q. With whom did you deal in your business arrangements with the Illinois River Packet Company?

A. I dealt on that, to lease it, with the Illinois River Packet Company.

Q. What individual?

A. And I turned the lease agreement in to the Norris [fol. 1471] Grain Company; and just who handled it there, I cannot say.

Q. Well, it was some officer or employe of the Norris Grain Company, wasn't it?

A. Well, I couldn't say for sure that they signed it. It has been quite a while since that transaction was made.

Q. Well, who was the man; what was his name?

A. Well, I just said that I don't remember who signed the charter.

Q. Where was it signed?

A. Well, I cannot tell you that; I mailed it in to Norris, and where it was signed I cannot tell you.

Q. You mailed it in to Norris?

A. Yes, sir.

Q. When was that, about?

A. Oh, that has been, I think about in 1937; I cannot tell you the date.

Q. Now, when you say you mailed it to Norris, do you refer to the document which covered your negotiation—the consummation of your negotiations for these barges with the Illinois River Packet Company?

A. That is what I am referring to, yes.

Q. And how many barges did you take over from the Illinois River Packet Company?

A. Just one.

Q. Did you get any other equipment of the Illinois River [fol. 1472] Packet Company?

A. No, sir.

Q. What happened to the other barges owned by that company?

A. The other barges owned by that company were old wooden barges, and they are not in service; they have been condemned for age, and the insurance company would not carry insurance on them.

Q. Is that lease which you turned in to Norris & Company in 1937 still in existence?

A. Yes.

Q. Have you had any financial assistance from any of the grain concerns?

A. Yes, I have; I borrowed some money at one time on my personal note.

Q. If you borrowed it from a grain concern, will you state from whom that was borrowed?

A. That was borrowed from Norris Grain Company.

Q. Mr. Mechling, some years ago you had a partner, didn't you?

A. That has been quite a few years ago; not since I have been in the grain business. That is when I was in the sand and gravel business, I did have a partner.

Q. And that partnership was dissolved?

A. Yes, sir.

Q. And since that you have been operating as an individual?

A. That is right.

[fol. 1473] Q. You have no partner?

A. No, sir.
Q. Your son is not a partner?
A. No, sir; he is not.
Q. He is one of your employes?
A. He is one of my employes.
Q. You formerly resided at Sheffield, Illinois?
A. Yes, sir.
Q. And then moved your business to Joliet?
A. Yes, sir.
Q. Where do you reside in Joliet?
A. At 523 North Raynor Avenue, in Joliet.
Q. And where is your business place?
A. At my house; I have an office at my house.
Q. And some 14 or 15 or 16 of your 37 employes, to whom you referred yesterday, are your office help?
A. What is that?
Q. Some 14 or 15 or 16 of the 37 employes to whom you referred yesterday are your office help?
A. No, sir; not that many.
Q. How many?
A. One, besides myself.
Q. Is that your son?
A. No, that is the girl that I have working for me.
Q. Do you recall yesterday your testimony that the only [fol. 1474] contract in existence today, to which you are a party, is the contract with the Allied Barge Corporation?
A. Yes, sir.
Q. That is the situation today?
A. That is the situation today.
Q. Is it not true that you have had term contracts in the past for the transportation of grain?
A. I have had; yes, sir.
Q. And how recently?
A. In 1937, for the season of 1937.
Q. And how about the season of 1938?
A. There was no contract in force for the season of 1938 or 1939.
Q. Was there an understanding that the 1937 contract would cover the 1938 operations, by letter, or verbal understanding?
A. No, we just continued on, on the same basis, but never renewed the contract; and there was never any conversation or agreement in 1938 or 1939.

Q. Were there more than one of those?

A. No, just one.

Q. Was that with the Norris Grain Company?

A. That is right.

Q. Have you any title to, or lease of, any real or personal property in Havana, Illinois, or its vicinity?

A. Havana, Illinois—no, sir.

[fol. 1475] Q. Pekin, Illinois?

A. No, sir.

Q. I am asking now as to each one of these points that I will name; any title or lease of, or interest in, any real or personal property at these points that I will name, or in their vicinity; you understand that?

A. Yes.

Q. Peoria?

A. No, sir.

Q. Chillicothe?

A. No, sir.

Q. Lacon?

A. No, sir.

Q. Henry?

A. No, sir.

Q. Hennepin?

A. No, sir.

Q. LaSalle?

A. No, sir.

Q. Ottawa?

A. No, sir.

Q. Seneca?

A. No, sir.

Q. Morris?

A. No, sir.

[fol. 1476] Q. Joliet?

A. Yes, sir.

Q. I mean along the river?

A. Why, this property there.

Q. But along the river?

A. No, sir.

Q. Chicago?

A. No, sir.

Q. Have you any such interest as I have indicated at any point along the river, other than Joliet?

A. No; I own property in Joliet, and that is all.

Q. And the property to which you refer in Joliet is your residence?

A. That is right; and I also use it as my office.

Q. Yes; now, Mr. Mechling, I am referring to the grain which you bring to Chicago: from what point along the Illinois River do you originate, you personally with your barges, the largest amount of the grain?

Exam. Taylor: His own grain, are you speaking of?

Mr. Enoch: No; did I say that—read that.

(Question read by the reporter.)

Mr. Enoch: Strike that question, please. I am speaking of the corn brought to Chicago by the A. L. Mechling Barge Line; from what point does the largest amount of that grain originate?

[fol. 1477] The Witness: I would say from Morris.

By Mr. Enoch:

Q. And from what point was the next largest amount——

A. Can I elaborate a little bit on that?

Q. Yes.

A. However, that may change; because there is elevators built this year that may change that picture. But I am referring, when I answered that, to what has been. And to take it over this whole season, I think I am correct in saying that Morris has furnished a larger volume than any other town along the river.

Q. What point would be next?

A. Well, I can't say from there on; I am not sure. All the rest of the points, I would say, are about equal.

Q. Would you say that? Would you say that Pekin was equal to Seneca and LaSalle?

A. No, I wouldn't say that; I would say Seneca, Ottawa, and LaSalle were about equal.

Q. Now, as a matter of fact, when you name those four points you have named about all of the points from which this grain that you handle is really handled to Chicago, in volume?

A. Oh, no; no.

Q. Can you give me the amount of grain that you handled from 1939 from Havana to Chicago?

A. No, I cannot. I could have, if I had known this was [fol. 1478] going to be asked me. But it will take some time to get those figures together.

Q. You have handled a barge of grain from Havana to Chicago?

A. Oh, a good many of them; we did quite a substantial business down there.

Q. Pekin?

A. Yes.

Q. How many?

A. I do not pretend this to be accurate, now; I will say around 10, 12 barges.

Q. Now, in connection with that corn out of Pekin, that was, you said yesterday, via Dewey?

A. Dewey and Norris both ship out of Pekin.

Q. Now, isn't it a fact that that situation at Pekin, insofar as Dewey is concerned, is about the same as you described at Lacon, where you mentioned the Terminal Grain Company and then said that after all that was really the Continental and Norris, because the Terminal Grain Company sold for either one of those two people?

A. No, that is not the same; the Dewey people themselves sells their grain to Chicago, and they have it transported.

Q. Henry?

A. I would say Henry, Lacon and Chillicothe and Hennepin are about the same place when it comes to volume; probably a little bit heavier at Hennepin.

[fol. 1479] Q. But Henry, Pekin, Chillicothe, Lacon, and Hennepin, are all very small, compared with the shipments out of Morris?

A. Well, we are down there pretty near every week for a cargo of grain.

Q. Is my statement correct, or not?

A. I would say they are smaller, but I would not say that they are not to be considered at all. They are quite good producing stations.

Q. All right; now, take Morris; compare the amounts of grain that you yourself, the A. L. Mechling Barge Company originates at Morris; compare that with all of the grain, speaking for the year 1939, that you originated at Havana, Peoria, Chillicothe, Lacon, Henry, and Hennepin; it would be a good deal less than that, wouldn't it?

A. Half of all that was originated, you mean?

Q. At Morris?

A. That those small stations would be half of what was originated at Morris; is that what you mean?

Q. Less than half of what was originated at Morris?

A. Well, I couldn't answer that.

Q. I think you stated yesterday that you have had no contact whatever with the Illinois Commerce Commission?

A. No, sir; I do not.

Q. Mr. Belnap asked you about legal advice you obtained, and you said that you had; can you tell me when [fol. 1480] you got that advice?

A. Oh, just recently.

Q. Do you mean within the last two or three months?

A. Yes.

Q. Since this case arose?

A. Yes; that has been since this case arose.

Q. Was that a written opinion?

A. No, it was not.

Q. But you describe your operations, did you, to your lawyer?

A. I did; yes, sir.

Q. And got his advice on that?

A. That is right.

Mr. Enoch: That is all I have.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. Mr. Mechling, your original water operations, as I understand it, were on the Hennepin Canal?

A. Yes, sir.

Q. You operated out of Sheffield at the time?

A. I lived at Sheffield; yes, sir. That was my base of operations.

Q. And you handled sand and gravel?

A. Yes, sir.

Q. Between what points?

A. We had a plant located on the canal right of way, and we handled it through the canal down southwest, Colona [fol. 1481] toward Rock Island. And then we went up the feeder part as far as Rock Falls, on the feeder; and all points in between. We sold road gravel, for gravel road purposes.

Q. Those operations were about 100 miles west of Chicago, were they not, roughly?

A. About 150 miles west of Chicago.

Q. I mean Joliet.

A. 100 miles west of Joliet, I would say, yes.

Q. And from there you came to Joilet and started operations on the Illinois River?

A. I came to Joilet about a year and a half ago.

Q. But you started your Illinois River operations somewhat earlier than that?

A. Yes, sir; in 1930.

Q. And at that time you did not have this partner that you spoke of?

A. No; I operated the last three years in the gravel business alone.

Q. That was up to what time?

A. In 1930.

Q. And in 1930 you began handling grain?

A. Yes, sir.

Q. Between what points?

A. Between Hennepin Canal stations; there was four elevators on the Hennepin Canal,--and Pekin.

[fol. 1482] Q. And how long did you continue in that business?

A. I continued in that until 1935.

Q. The first part of the year?

A. No, we operated all the season of 1935.

Q. And after that you started operating to the north and east, did you?

A. Yes; that was about the time that the Illinois River was opened up to Chicago; and that changed the picture in the river business.

Q. That was when, in 1936?

A. We brought our first barge load of grain to Chicago in the fall of 1935.

Q. You say 'we brought;' to whom do you refer by that?

A. Well, my outfit; my outfit.

Q. What was that outfit?

A. A. L. Mechling Barge Line at that time.

Q. You operated then as now, under the same name?

A. The same name; yes, sir. When I was in the gravel business it was A. L. Mechling Gravel Company.

Q. Did you bring your sand and barges up the river for operation into Chicago, when you changed your method of operation?

A. No, sir.

Q. You disposed of those, did you?

A. That is right.

Q. And bought different equipment?

[fol. 1483] A. All I did at that time was toll barges owned by the Turner Hudnut Grain Company.

Q. What time was this—fix that time, will you, with reference to this company?

A. From 1930 until 1935.

Q. Was this first barge that you brought into Chicago the business of the Turner-Hudnut Grain Company?

A. No; at that time the Turner Hudnut Grain Company sold out to Rosenbaum Corporation, early in the year of 1934; and then I continued to work for the Rosenbaum Corporation.

Q. And this first load you brought into Chicago was for the successor of Turner Hudnut Company?

A. Yes, sir; that is correct.

Q. When you began to haul grain into Chicago, how many barges did you own?

A. I didn't own any at that time; that is, any grain barges. I owned some gravel barges.

Q. When did you first acquire barges for the handling of grain?

A. In 1937.

Q. The early part of the year, or the latter part?

A. About the middle of the year, I would say; the middle of the season.

Q. How many did you obtain at that time?

A. I bought one at that time.

Q. Was that a new one?

[fol. 1484] A. That was a new barge; yes, sir.

Q. And have you still got it?

A. Yes, sir.

Q. What is the capacity of that barge?

A. 400 tons.

Q. In bushels, how would you express it?

A. About 13,000 bushels.

Q. When did you acquire the next barge?

A. I am going to have to change my testimony there; that first barge was bought about the middle of the year 1936.

Q. All right.

A. And the second barge, the mate to that, was bought in 1937.

Q. In the middle of the year?

A. Toward the latter part of the year; I would say along in September.

Q. What did you pay for each of those barges?

A. Those barges cost me approximately $9,000 apiece.

Q. When did you get the next one?

A. I bought two barges, then, in 1937.

Q. After September?

A. Yes, that was rather late in the fall, as I recall it. Those were used barges.

Q. And you got these two at the same time, did you?

A. Yes.

Q. What did you pay for them?

[fol. 1485] A. As I recall it—I could have looked all this up, but I did not. It has been sometime ago, and I do not just remember all those figures. But it was in the neighborhood of $3,000 for the two of them.

Q. What was their capacity?

A. Their capacity was about 17,000 bushels.

Q. Each?

A. That is right.

Q. And the one purchased in September of 1937 was what capacity barge?

A. That was the same as the first, a duplicate of that first one.

Q. 13,000 bushels.

A. That is right.

Q. Now, to shorten this up a little, how many barges did you own the 1st of January, 1939?

A. The 1st of January, 1939?

Q. That is approximately a year ago.

A. I owned 11 barges.

Q. That does not include the one you have leased from the Illinois River Packet Company?

A. No; no, I do not pretend to own that.

Q. And you acquired six, then, during the last year, did you?

A. Yes; I acquired seven and sold one; so it amounted to that.

Q. And are you able to say how many of these 17 barges [fol. 1486] that you own at present were purchased new?

A. Well, two of those were purchased new.

Q. That is, the first two you bought?

A. The first two I bought were new.

Q. The others were bought second hand?

A. The others were about ten years old.

Q. How many tow boats did you own the 1st of January, 1939?

A. The 1st of January, 1939, I owned four tow boats.

Q. And you still own four, as I understand?

A. But I want to explain that a little bit: two of those I own now. I just wonder now, to get them straight on this as we go along, if we had not better name those at first, give you the horse power, so if you want it or I want it I can identify them. Do you want that?

Q. I think it is sufficient; I have seen the names of them, and I think it is sufficient to say that there are four of them, and to say that you have not changed the number in the past year.

A. I have sold two of the small ones, and built two big ones in the past year; so that I still own four boats, but they are not the same four.

Q. You still own the Mary Ellen, the Gladys M, Harold Grant, and the Junior?

A. I still own the Mary Ellen and the Gladys M, but I have disposed of the Harold Grant and the Junior.

[fol. 1487] Q. Purchased two other ones in their place?

A. I built two others, new.

Q. Are the two you built the same capacity as the Gladys M, and the Mary Ellen?

A. No, they are larger than either one of those.

Q. They are larger?

A. Yes, sir.

Q. Now, in addition to this barge you leased from Norris, do you lease any others?

A. No, sir.

Q. Under the terms of this lease with Norris, what do you pay them for the barge?

A. I pay them a dollar per year.

Q. One dollar per year?

A. Yes.

Q. Are you able to state the tonnage you handled, approximately, during the year 1929?

A. Well, I could have; but I thought you were going to ask me bushels, so I changed it all to bushels.

Q. That is all right; give it to us in bushels.

A. I cannot say exactly; I had the girl figure up all the tonnage, and she got some tonnage that I had towed under

contract with somebody else in this amount, and she did not have time to take it out again; but I would say between twelve and thirteen million bushels.

[fol. 1488] By Mr. Brown:

Q. All for Chicago?
A. Yes.

By Mr. Belnap:

Q. That is all grain, is it?
A. Yes.

By Mr. Day:

Q. This that the girl included, that had been under contract with somebody else, what was that?
A. That was grain that went down the river.
Q. Went in the other direction?
A. Went in the other direction. I had a boat under charter to another company.
Q. One of your tow boats?
A. One of my tow boats; somebody elses job. I just had it under charter, and for a government report we have to show that tonnage, and she took that tonnage.
Q. Whom did you turn over your tow boat to?
A. Central barge line.
Q. Where do they operate?
A. They operate from New Orleans and Pittsburgh as far up as Minneapolis, and into Chicago. They have a very big operation.
Q. Then they should have been listed with the other barge lines operating the Illinois River.
A. They do not tow grain into Chicago. I was asked what companies towed grain into Chicago.
Q. You mean they stop short of Chicago?
[fol. 1489] A. They tow south, but they do not tow grain into Chicago.
Q. You mean they operate only in one direction?
A. For grain, yes.
Q. They would take grain out of Chicago and haul it down to New Orleans, for instance?
A. I imagine they would; I don't know.
Q. Or they would haul it to Peoria and St. Louis?
A. That is right.

Q. But they do not bring grain up to Chicago?

A. They do not have any operation on the south side, up the Sag Channel.

Q. Will you tell us what your revenue receipts were in 1939, from this grain?

A. I cannot tell you that, no.

Q. You do not know the amount of business you did last year?

A. I know the approximate amount of business, but it includes a lot of other things besides towing grain.

Q. What other things?

A. Just like I said, I had these boats chartered out; and I have towed steel a little, not very much. I have had a tow chartered out towing coal from Havanna to Chicago; and all that revenue is in my gross receipts, and I have not picked it out.

Q. You have classified that as rentals to other companies?

A. That is rentals; yes, sir.

Q. And you don't know what part of your receipts were [fol. 1490] from grain hauling?

A. No.

Q. Steel and coal, and so forth?

A. Yes, sir.

Q. What were your total receipts from all operations?

A. From all operations, in the neighborhood of $270,000.

Q. Well, isn't it fair to say that about 90 per cent of that revenue was derived from this grain traffic?

A. No, sir; no.

Q. What would be your best judgment on it?

A. Oh, I would say about, probably 75 per cent of it.

Q. What was your payroll in 1939?

A. The payroll amounts to a little over $5,000 a month. That would be $60,000 for the year.

Q. And do you pay Social Security taxes on that?

A. No, we do not. All boats documented are not compelled to pay that.

Q. They are not subject to the Social Securities Act?

A. They are not subject to the Social Security, no.

Q. The only federal tax you would pay, then, is income tax?

A. That is right.

Q. What did that amount to last year?

Mr. Belnap: Mr. Examiner, this gentleman is not my witness; I don't know whether he wants to tell his private business. I think he ought to be instructed that he has a right to [fol. 1491] say to the Examiner that he would prefer not to answer, and ask the Examiner whether or not he has to.

Mr. Day: I submit this is not private business.

Mr. Belnap: I am simply advising the witness as to his rights.

Mr. Day: What I am acquiring about is taxes from his so-called barge line.

Mr. Belnap: I just advised the witness that if he has anything about his personal business—I wouldn't want to tell Mr. Day my income tax, because he would laugh at me; maybe this gentleman does not. If he wants to tell him, O. K.; but if he does not want to, I tell him he can ask the Examiner and get a ruling.

Exam. Taylor: What is the question?

Mr. Day: I asked him what the federal income tax was that he paid in 1939.

Exam. Taylor: Paid on what?

Mr. Belnap: Personal business.

Mr. Day: No.

Exam. Taylor: I am asking you, Mr. Day.

Mr. Day: This gentleman is operating as an individual, and I am asking him what income tax he paid.

Mr. Belnap: What year?

Mr. Day: 1939. I asked him for the taxes that he paid in 1939. These gentlemen do not have to try to heckle me. [fol. 1492] Mr. Belnap: Please, Mr. Examiner, I am not trying to heckle him. He has the gentleman on the stand——

Mr. Day: That is not the question; the Examiner asked me what I was inquiring about, and Mr. Root broke in and said what year, after I had specified the taxes paid in 1939.

Mr. Root: You had not specified.

Mr. Day: I did.

Exam. Taylor: Do you care to answer that?

The Witness: Well, do you consider that it is, that it has a definite bearing on this case?

Exam. Taylor: Only insofar as the business as a carrier by the barge lines is concerned; as to your personal business, I would say no,—personal affairs. If you could sever it, give it as to the barge lines, why that would be a different question.

The Witness: Well, I just keep one set of books.

Exam. Taylor: That includes this business, as well as any other business, your personal affairs?

The Witness: That is right.

Exam. Taylor: I won't require you to furnish that, if you cannot make a distinction between them.

Mr. Day: You say you will not require it?

Exam. Taylor: No, under those circumstances, I will not.

Mr. Day: I would like to note an exception to the Examiner's ruling.

[fol. 1493] Exam. Taylor: Exception noted on the record.

By Mr. Day:

Q. What was the amount of state or county taxes paid by you last year?

A. Around, as I recall it, $209.

Q. Now, you are familiar with the routes traversed in operating your barges from Illinois River points to elevators in South Chicago?

A. Yes, sir.

Q. You know the location of those elevators, do you?

A. Yes, sir.

Q. And what channels are they located on?

A. On the Calumet River.

Q. The same branch of the Calumet River?

A. Yes, sir. You are talking about the elevators in South Chicago now?

Q. To which you deliver grain.

A. To which I deliver grain; that is right.

Q. Are all of those operations through the Sag Channel?

A. Yes, sir.

Q. Do you ever have grain for elevators on the Chicago River?

A. We have taken a few barge loads up to the Santa Fe at Damen Avenue.

Q. That would require a movement all the way through the Drainage Canal?

A. Yes, sir.

[fol. 1494] Q. And the Chicago River.

A. Yes, sir.

Q. But, as I understand it, the bulk of your business is handled through the Calumet Sag Channel?

A. Yes, sir.

Q. What is the time ordinarily consumed in transporting grain from Seneca or Morris to these elevators?

A. That is coming in with the grain you refer to?

Q. Yes.

A. Not a round trip?

Q. No.

A. Coming in with the grain?

Q. Coming in.

A. It depends a little on the size of the tow we have, whether we have two barges or whether we have six or seven; but the average time from Morris is 24 hours into Chicago.

By Exam. Taylor:

Q. 24 hours from point to point?

A. Yes, sir. And that will vary less or more, probably as high as three or four hours one way or the other, depending on the size of the tow.

Q. And how much time is ordinarily taken before you start the return trip from the elevator?

Exam. Taylor: I don't quite understand the question.

By Mr. Day:

Q. After arrival of the tow at the elevator in south Chicago, how much time is ordinarily lost there before the tow [fol. 1495] and barges start on their return trip?

A. Well, that depends on whether we wait for them to unload any barges, or not. If we just bring in loads and pick up empties, which we do a good deal of the time, why, we probably are not in Chicago more than, oh, two—it takes about, I would say, two or three hours if we got a barge for three or four different elevators; by the time we deliver those barges it takes about from two to three hours; and then it will probably take two hours to pick up our empties and get out. I would say five hours moving around the various elevators and making up our tow and getting ready to go back—I would say about five hours.

Q. Do you customarily wait for the barges' unloading?

A. I would say about two-thirds of the time, by the time we get our tows ready to go back we do not have to wait more than an hour or two to get a barge; in that case we wait. I would say about two-thirds of the time we wait for the barge. We do not wait for all of them.

Q. How long does it take for the return trip?

A. About 12 hours to Morris.

Q. The Calumet Sag Channel is only wide enough for one barge?

A. Well, we tow two wide, two of the 20-foot barges wide.

Q. You say, then, that it is wide enough for two?

A. For two small barges, yes; two 20-foot barges; we do tow them occasionally two wide. Anything wider than that, we string them out.

[fol. 1496] Q. How many of your barges are under 20 feet?

A. There are 14 of them 20 feet wide.

Q. And you say when they are as much as 20 feet wide, there is room enough for another tow to pass in the other direction?

A. Oh, there is room for another to pass on these 26-foot barges.

Q. Is that the way the operation is conducted?

A. Yes.

Q. You do pass?

A. Oh, we pass all the time.

Q. Other tows going down the river?

A. Yes, sir. There are times when a tow boat will have a big barge—there are some barges operate up there as wide as 42 feet. Now, they cannot pass. That does not happen very often.

By Exam. Taylor:

Q. You mean in the Sag Channel?

A. In the Sag Channel. Any of our barges will pass a 26-foot barge in the canal; I will say that.

By Mr. Day:

Q. How long since you have sent any tows to Chicago?

A. You mean right now?

Q. Yes.

A. We have got a tow into Chicago now.

Q. You ran it in last night?

A. Came up the river last night, and it is in Chicago now. [fol. 1497] We had a tow in here the latter part of last week.

Q. You had one last week, and you have one on the way up now?

A. Yes, sir.

Q. When did it leave?

A. It left last night, about 6:00 or 7:00 o'clock, I would say.

By Mr. Root:

Q. Where did it leave from?

A. Morris.

By Mr. Day:

Q. You estimate that will be in this evening?

A. No, I stopped it at Joliet, on account of the ice in the Sag. I figure we have got some warm weather coming, and don't want to run that ice. It could run it.

Q. What is the longest you have been held up on account of ice or weather conditions?

A. Well, this period right now; we are not held up on all of our operation. We are held up in our operation below Seneca right now, and have been for three weeks. That is the longest we have been in the last three years.

Q. Three weeks?

A. Yes, sir.

Q. You have some grain on the barges below Seneca waiting to get to Chicago?

A. Yes, sir.

Q. You have been holding it there for three weeks?

A. Yes, sir. It has not been loaded that long; but we [fol. 1498] have not been able to get down there.

Q. How long have the barges been loaded?

A. Oh, I would say a week or ten days.

Q. So long as this freezing weather lasts, they will continue to be held?

A. That is right.

Q. So long as this cold weather lasts, you will hold this barge at Joliet too?

A. *On*, unless I decide to run it in. I can run it in at any time, if I want to.

Q. You made a statement that where you haul for the Co-operative Grain Dealers or its subsidiary, the Allied Barge Line, and supply the barges, that you charge 1¾ cents, was it?

A. 2¾ cents a hundred pounds.

Q. From Morris or Seneca?

A. That is right.

Q. And you said there have been occasions where you did make that full charge against them?

A. Yes; as a matter of fact, I think we did it eight times last year; we used our barge.

Q. You used eight barges? Now, as I recall the testimony of Mr. Robbins, he said that where he had occasion to use your barges for his grain, that at the same time there were barges of his in your possession, that you used another setup?

A. We do that quite a little.

[fol. 1499] Q. Do you include that in these eight times?

A. No; other times than these eight times we have traded barges with him. Maybe he won't need a barge today, and I need it some place else; and I have got another barge coming up tomorrow that will be in time for him, and we just trade. But this eight times that I referred to, he paid me 2¾ cents per hundred pounds for the use of my barge.

Q. In these barge lines that you named, what grain shippers have any interests?

A. The W. W. Dewey—I don't know whether I ought to say this or not.

Q. Yes, I think you ought to.

A. I am going to ask the Examiner: can we go off the record?

Exam. Taylor: Yes. What was the question, first?

Mr. Day: He was about to tell us the interests that certain grain firms have in some of these barge lines.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: You can testify; state it on the record now.

By Mr. Day:

Q. Now, just tell us about the interests of these grain firms in any barge lines.

A. The only barge line that I know of, outside of what we went over, with this Illinois River Packet, is the W. W. [fol. 1500] Dewey Grain Company. They own the Spring Lake Packet Company, and the Spring Lake Packet Company owns a barge known as Barge No. 9, about a 300 ton capacity. And the other grain company that owns—well, the Allied Barge Company own barges.

By Exam. Taylor:

Q. What did you state about your connection with Dewey Company?

A. Oh, did you want some statement on that, about my connection.

By Mr. Day:

Q. Yes, tell us about it.

A. I used the little tow boat Junior for about four months towing this barge No. 9.

By Mr. Belnap:

Q. When?

A. In 1938.

Q. To where?

A. Now, wait just a minute——

Mr. Day: Mr. Belnap, supposing you ask those questions on direct.

Mr. Belnap: I don't mean to interfere with you, Mr. Day; but I thought the Examiner suggested he would like to have the whole transaction cleared up, I apologize to you.

Exam. Taylor: Proceed.

Mr. Belnap: He is trying to think about a date; I thought that was what you wanted too.

The Witness: I am not sure whether it was 1937 or 1938; we did not work there very long.

[fol. 1501] By Mr. Day:

Q. What about John R. Hay; has he any connection with the Grain Business?

A. Not to my knowledge, no.

Q. How long has he been operating on the river?

A. In this connection, what do you mean; that he has a contract, or he has hauled some grain or what?

Q. Now, I mean is he connected by stock ownership or employment or in any other way, with these grain firms?

A. Well, that is what—that is the way I answered your question. I just wanted to be sure I answered correctly. You mean that he would have some sort of a financial arrangement, or contract, with the grain company; just the fact that he has towed some grain, you do not mean?

Q. No.

A. All right; I answered your question.

Q. So far as your knowledge goes Hay is an independent operator and had no connection with any grain company in any way?

A. No, sir.

Q. How long has he been operating as a grain hauler on the river?

A. Oh, he has hauled grain for the last two years, I know; I don't know whether he has hauled in other years, or not. I know he has hauled some grain for the last two years.

Q. Whom does he haul for?

A. Well, he hauls for the Cargill Grain Company; he has [fol. 1502] hauled some for Dewey Grain Company, and he has hauled some for Continental Grain Company, that I know of now. He may have hauled more.

Q. But he hauled substantial quantities for those three?

A. Yes, sir.

Q. What about Lawrence Transportation Company?

A. Lawrence Transportation Company has the job that I had with W. W. Dewey Company, towing that barge No. 9.

Q. Waterway Transportation,—well, that is a St. Louis outfit?

A. Yes, that is a St. Louis outfit.

Q. Do you have any interest or connection in any grain business?

A. No, sir. You mean in some way of a share of stock, or financial connection?

Q. Yes, financial connection.

A. No, sir; I do not have any connection with any grain company.

Q. Do you ever engage in the grain business at all yourself?

A. No, sir.

Q. Ever buy or sell grain?

A. I never do; no, sir.

Q. Your own interest in grain or any grain company, then, is in hauling it on the river?

A. Yes, sir; that is right.

Q. You spoke about the charges you make for the trans- [fol. 1503] portation of grain; is that charge the same, regardless of quantity offered?

A. As a rule, yes. I do not make any different charge for quantity offered.

Q. You say that because these people usually offer you grain in sufficient quantity where——

A. That is right. The only time that I made any exception, as I told you yesterday, was that case at Peru, where I charged them a little bit more because they did not have good loading facilities, and tied up my barge.

Q. Supposing a man should offer you a thousand bushels of grain at Morris, what would you tell him,—what would you charge him?

A. Well, our grain has to at least be offered in quantities big enough to load a barge.

Q. It has to be in barge lots?

A. Yes, just the same as you with a car could not take 50 bushels.

Q. We do take less than carload, but charge by the hundred pounds.

A. Well, I do not pretend to take anything in less than barge load lots.

Mr. Day: That is all.

Exam. Taylor: Off the record:

(Discussion outside of the record.)

[fol. 1504] By Mr. Enoch:

Q. Referring to exhibit 49, Mr. Mechling, is that the only form of bill of lading that is issued by the A. L. Mechling Barge Line?

A. Yes, sir; it is.

Mr. Enoch: I would like to ask another question that is not connected with this; one I overlooked:

Exam. Taylor: Go ahead.

By Mr. Enoch:

Q. Mr. Mechling, this case began last Wednesday; this is the third day. Were you here at the beginning of the hearing on Wednesday?

A. No, I was not.

Q. Were you here Wednesday?

A. I was here Wednesday afternoon; I think I got here around 2:00 o'clock.

Q. From whom did you receive notice that you should attend this hearing?

A. Well, I have known about it; I was here when you were having the hearings the 19th of December, and I have known about it, and I knew when the dates would be.

Q. At whose request did you arrange to attend the hearing?

A. By Mr. Belnap's.

Q. There is not the slightest impropriety in your talking this case over with Mr. Belnap many, many times; but you did talk it over?

A. Yes, sir.

Mr. Belnap: Otherwise I could not ask him questions.

[fol. 1505] Mr. Enoch: The reason is, you surprised me yesterday when you said you were calling Mr. Mechling at my request; but our conversation about it was certainly not prior to last Wednesday noon.

Mr. Belnap: I had understood from the past hearing, Mr. Examiner, that Mr. Enoch was especially anxious to have somebody operating on the river be on the stand and present the facts of that. When I said was Mr. Mechling called, if I used the word request, I do not think any such request has ever been made. I thought he wanted the facts, and I am glad to get it on the record.

Exam. Taylor: I am going to declare a five-minute recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. Have you finished?

Mr. Cole: I had one question, if I may.

Exam. Taylor: Mr. Cole.

By Mr. Cole:

Q. Mr. Mechling, I was just wanting to get straightened out on the number of barges that are operating on the Illinois Waterway, hauling grain to Chicago; I understand that you operate 17 of your own; there is one under lease; and that Allied have three barges.

A. Four.

Q. And the Dewey Company has one.

[fol. 1506] A. That is right.

Q. Now, how many barges does Hay have that he uses for hauling grain?

A. Oh, I don't know exactly. I see his operation. I would say around three or four. However, those are big barges. They haul about 45,000 bushels.

Q. Now, outside of this Hay and Allied and Dewey, do you know of any other barges that are being operated on the Illinois Waterway, hauling grain into Chicago?

A. Not unless the Federal Barge Line hauls some into Chicago; I don't know just what they do, whether they haul any into Chicago or not.

Q. This Dewey outfit that you referred to, when you handled from them; by their distance that they make, do they ship only from Havana?

A. No, Dewey ships from Pekin.

Q. Only from Pekin?

A. Pekin and the Hennepin Canal stations.

Q. How many stations are there on the Hennepin Canal?

A. I think there are three stations on the Hennepin Canal.

Q. Those are the location from which Dewey ships?

A. Yes, sir.

By Mr. Day:

Q. Are these barges of yours numbered?

A. Yes.

Q. How are they numbered?

[fol. 1507] A. The only way I can tell you that is what the numbers are; do you want that?

Q. Yes.

A. They are not numbered from 1.

Q. All right; tell us what the numbers are?

A. They are 4, 5, 6, 7, 1096, 1108, 1109, 1111, 1112, 1113, 1599, 101, 102, 103, 104, 105, and 106.

Q. When did you have this form of bill of lading, marked exhibit 49, printed?

A. Oh, that has been in use, I would say sometime during 1939; I do not recall just when I started to use that bill of lading, but it was during the year 1939.

Q. Who printed the forms?

A. I had the forms printed down at Joliet.

Q. By whom?

A. Isn't his name on there? I think his name is Newman Printing Company.

Mr. Day: That is all I have.

By Mr. Brown:

Q. Mr. Mechling,——
A. Yes, sir.

Q. When you said that Morris, Illinois, was the largest shipping point of grain by barge to Chicago, did you include Patonville and Seneca in the Morris group?

A. No; I used Patonville, but not Seneca; that was my thought in combining those two stations, Allied and——

[fol. 1508] Q. But Seneca would be separate?

A. Seneca would be separate.

Q. Would Seneca rank second?

A. I don't know; I just do not feel qualified to make that distinction, without going over that from my records; I have not done that from each station.

Q. Based on your memory, would you say Seneca is about along with Ottawa and LaSalle?

A. I would say Seneca, Ottawa, and LaSalle are about the same.

Q. Running second to Morris?

A. Yes.

Q. I want to question you about your rates, which you stated yesterday were public; that is, where you used your own barges, and refer particularly to the rate of 2¾ cents per hundred pounds from Morris, Seneca, and Ottawa and LaSalle; now, does that 2¾ cent rate apply for deliveries to elevators on the Chicago River, as well as to elevators on the Calumet River?

A. Well, we have never had any occasion to deliver any of that grain up there, except once or twice.

By Mr. Root:

Q. Up there, you mean the Chicago River?

A. The Santa Fe elevator. As I recall, those same rates did apply there. However, I have in my contract with Allied Grain Company, in that contract I have an extra charge if we just go up there one trip, so that we have got to go [fol. 1509] back light; I have an extra charge by the hour, whatever we use. But if we establish a trade there, going back and forth, the rate will be the same.

Q. At the present time, charging on the hour basis, will that hour basis run from Hammond, which is the junction with the river, up to the elevator, and back again?

A. It will just consume the time one way.

Q. Which is it, the going trip?

A. For instance, going up it would be going back and going after the barge; it would be from the time we left the Sag Junction at Hammond to go up after the barge; it would be a dead running.

Q. It would be dead running to pick up the empty barge?

A. That is right.

Q. Let us take the contract rate of one cent per bushel; would that cover delivery also to the Santa Fe elevator?

A. Under those same terms, the same arrangement; yes, sir.

Q. That would just involve what you have just explained, dead time paid for on an hourly basis?

A. Unless we establish that trade; then, when we got empties to go after, there won't be that.

Q. In other words, if the shippers along the river give you sufficient business to go to the Santa Fe elevator regularly, these rates will apply?

A. Yes, sir.

[fol. 1510] Mr. Brown: That is all.

Exam. Taylor: Any redirect?

Mr. Belnap: Yes, I have some questions.

Redirect examination.

By Mr. Belnap:

Q. Has your personal note to the Norris Grain Company, about which you testified been paid?

A. No, it has not; it is not due yet.

Q. When you spoke about your tonnages out of Morris, were you including in the aggregate the grain that you handled for the Allied Barge Corporation?

A. Yes, sir.

Q. Is that Barge No. 9 about which you spoke used in the transportation of grain into Chicago?

A. Yes, sir.

Q. As well as into Pekin?

A. Yes, sir. It made quite a few trips this year.

Q. You charged simply a towing rate when you handled it with your tow boat, the Junior; or did you charge your going rate in cents per hundred pounds?

A. I charged the going rate at that time in cents per hundred pounds.

Q. The one that you named as applicable from Joliet and Pekin?

A. Yes, sir; we had a rate, my charge to the Spring Lake Packet Company.

Q. That was the grain of Dewey, however?

[fol. 1511] A. That is right.

Q. Have you also handled the Dewey Grain in your own barges?

A. I have, once or twice.

Q. Do you actively solicit this grain business from the various shippers along the river, Mr. Mechling?

A. Yes, sir.

Q. Solicit all of them?

A. Yes, sir.

Q. On your exhibit 49, do you know when you handled this shipment for the Ladd Elevator Company as shipper, to Cargill?

A. As I recall, along in October sometime. I see the date is not on the bill of lading; it should be there. I don't know why it is not.

Q. 1939?

A. Yes, sir.

Q. The Examiner called our attention to the provision on exhibit 49 in connection with that clause headed 'Non-negotiable,' which in substance recites that you do not hold yourself out as transporting for the general public, and will do so only under private contract. Do you observe that announcement, or do you actually haul even when you do not have a private contract?

Mr. Cole: I object; trying to change a written document.

Mr. Belnap: That portion of that exhibit 49 is not a contract between the Ladd Elevator Company and A. L. [fol. 1512] Mechling Barge Line. It is an announcement by A. L. Mechling Barge Line. Now, I am trying to find out, as a matter of fact, whether he observed that announcement or whether he transports without contracts?

Mr. Brown: In other words, whether he waives it.

Mr. Enoch: I think the witness ought to be advised what the law of the state of Illinois is at the time he goes into that question; and I submit, at the time this legal advice was given about which the witness here spoke earlier in his testimony, that this very phrase had something to do with it.

Mr. Belnap: Now, I have not the slightest objection in the world, if Mr. Enoch wants to give the witness legal advise; but I do not see how the legal advice Mr. Enoch could give him could possibly change his testimony as to the fact.

Mr. Day: Well, you gave him legal advice awhile ago, Mr. Belnap; and you are not his lawyer.

Mr. Belnap: I advised him as to his rights.

Mr. Day: That is what Mr. Enoch did;—you are trying to get him to testify differently.

Mr. Belnap: I resent that, sir; I am trying to get him to testify as to the true facts.

Mr. Day: I resent your remarks too.

Mr. Belnap: We have resented all around; I wonder if we couldn't have the witness tell the facts.

Mr. Cole: Now, we have got to the point where I have an [fol. 1513] objection, based on the very general statement that Mr. Mechling made; and I am sure he will recall it, that all of his hauling has been done, all of it either under this contract or under that contract with the Allied outfit that we have here. Now, if all of his handling that he testified to has been done under these written contracts they have here, my objection is we cannot vary that written contract.

Mr. Belnap: I am not trying to, sir.

Exam. Taylor: This is redirect; proceed.

Mr. Belnap: Can you answer my question?

Exam. Taylor: Read it.

(Question read.)

By Mr. Belnap:

Q. Other than the type of bill of lading shown in your exhibit 49.

Exam. Taylor: He may answer.

Mr. Enoch: I want to note an objection.

Exam. Taylor: The objection will be noted on the record—this is as a fact now?

The Witness: That is right; I do not observe that, and my testimony earlier to the effect that I have and am willing to haul grain for any elevator on the river, I think will bear that out, that I do not insist on a definite contract with a grain company before I will haul grain for them.

By Mr. Belnap:

Q. Do you undertake to place barges at the elevators for [fol. 1514] grain loading before any bill of lading is signed?

A. Again, please?

Q. Do you undertake to place barges at river elevators before any bill of lading is signed?

A. Oh, yes; we place the barges there as soon as they notify me that they have a bargeload of grain. They do not make out a bill of lading until the barge is loaded.

Q. Do you keep in contact with various elevators up and down the river to determine whether they have grain to ship, and to determine when it is possible for you to place a barge?

A. Yes, sir.

Mr. Belnap: Mr. Examiner, I have here Mr. Mechling's contract with the Allied Barge Corporation. There are two of them. One was entered into at the time the first three barges were sold by him to Allied Barge Corporation, which covers a specified period; and then the almost identical contract was entered into when the fourth barge was sold to the Allied Barge Corporation; these are Mr. Mechling's signed copies of the contracts, which he of course must have back for his own records.

Exam. Taylor: Did you exhibit them to the railroad counsel?

Mr. Belnap: I have.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

[fol. 1515] Exam. Taylor: Back on the record. I am going to insist that the river straight bill of lading, the heading thereof be copied or read in the record; and following that, the two contracts which are submitted be read in the record.

Mr. Belnap: And by the heading, you mean that portion of the bill of lading down to where it says to whom it is consigned?

Exam Taylor: Yes.

Mr. Belnap: Will you read them into the record, Mr. Mechling?

The Witness: The heading of the bill of lading is as follows: River straight bill of lading. A. L. Mechling Barge Lines. Special Contract Towing Only. Received of the shipper in apparent good order and condition, except as

noted, the following goods, shipper's load, weight and count (amount, quality and value unknown to the carrier) to be delivered in like good order and condition subject to the terms and conditions hereof as consigned herein or to his or their assigns upon paying the freight charges indicated below. Not Negotiable. The shipper takes notice of, and, for himself and his assigns, assents to all of the provisions, terms and conditions hereof whether printed or written, including those on the back hereof, each of which is material, to the rates indicated below, and part of the contract. It is understood and agreed that the carrier and the vessel or vessels do not hold themselves out as trans- [fol. 1516] porting cargo or towing for the general public and only transport cargo and tow as private carrier under private contract.

The two contracts are as follows:

[fol. 1517] This writing, made and entered into in duplicate this first day of June, A. D. 1939, by and between A. L. Mechling, doing business as A. L. Mechling Barge Lines, first party, and Allied Barge Corporation, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and having a place of business at Morris, Illinois, second party, Witnesseth: That the said parties for the considerations herein mentioned have agreed and do hereby agree as follows, that is to say:

Recitals: The parties, under date of December 10, 1938, entered into an assignment to second party of the rights of first party in three certain barges, and on the same date entered into a towage agreement, reference to which assignment and towage agreement is hereby made for all the recitals, terms, covenants and provisions of each.

The three barges whereto the rights of first party were assigned to second party by said assignment dated December 10, 1938, were identified in said assignment as bearing operating numbers 216, 745 and 749.

Second party desires to acquire the rights of first party in a fourth barge, identified as bearing operating number 744, for use in second party's business of transporting grain and beans in bulk in the waters of the Illinois River and Waterway and Mississippi River between St. Louis, Missouri, and South Chicago, Illinois, and intermediate points. [fol. 1518] The parties desire to extend the term of the said towing agreement of December 10, 1938, to, and including, December 10, 1941, (without however extending the

time for any payment to be made by second party on account of said three barges 216, 745 and 749) provided, that the agreement hereby witnessed is not intended to waive or excuse performance, or any delay in performance, of any act or forbearance to which second party would be bound if the agreement hereby witnessed had not been made.

By contemporaneous instrument, first party, as part of this transaction, has transferred his rights in said barge 744 to second party, and by said contemporaneous instrument, as part of this transaction, second party has assumed obligations as therein expressed.

Consideration: The consideration hereof is the said transfer of the rights of first party in said barge 744, the obligations of second party assumed in said instrument transferring to second party the rights of first party in said barge 744, and the mutual covenants of the parties herein expressed.

Term: This agre-ment shall remain in force until December 10, 1941, inclusive of that day.

Covenants: 1. First party agrees that during the life of this agreement he will own, charter or control a towboat or towboats capable of moving said four barges from Morris to Chicago and return at times when the same are ready and [fol. 1519] movement thereof may be reasonably requested by second party. It is understood that first party has and will have different customers from time to time, including second party, and that such towboat or towboats need not be held or used exclusively or preferentially for second party's towing, but during the life of this agreement such towbo..t or towboats shall be used for second party's towing, under such bill of lading form as first party may from time to time customarily use in his business, as part of first party's general towing business, along with first party's other customers, without any discrimination against second party with respect to times of making towboat available or otherwise; provided, that first party's undertakings in this paragraph numbered one shall not be conditions in any respect of any obligation of second party assumed in said contemporaneous agreement or otherwise.

2. Second party agrees: (a) That it will pay first party for all grain, except oats, and beans, moved between Morris, Illinois, and South Chicago, Illinois, by means of first

party's towboats, the sum of one cent per bushel outturn weights; and eight-tenths of a cent per bushel outturn weights for all oats moved by means of first party's towboats between Morris, Illinois, and South Chicago, Illinois.

(b) This agreement primarily contemplates the movement of loaded barges from Morris to South Chicago and return of empty barges to Morris. If, however, second [fol. 1520] party requests first party to deliver barges at the Santa Fe house on the South Branch of the Chicago River while on the way into South Chicago with a tow, second party shall pay first party therefor at the rate of eight dollars an hour for the time between the Sag Junction and the Santa Fe house and return without tow and in addition the aforesaid price per bushel in event of any such barges being laden. In event the towboats of first party are out of service or the second party is compelled for some special reason to move said barges more quickly than first party would be able to move them in the line of his usual service to his customers, then in either of those events, second party, if not in default hereunder, may give first party written notice addressed to him and at 110 Willow Avenue, Joliet, Illinois, specifying the number, lading, destination and location, which shall be a single location, of such barges as to which such reason exists and the reason: and in event the barges mentioned in said notice are seaworthy and the insurance provisions hereof are fulfilled with respect to them and their cargo, then if first party fails within 48 hours next after the receipt of such notice to bring his towboat to said location and hook on to such tow, providing second party has first complied with all of the provisions hereof, then under those circumstances second party may make other arrangements for moving said barges on the trip mentioned in such notice without liability to first party: [fol. 1521] provided that only one such notice shall be given in any one period of 96 consecutive hours.

(c) That all barges shall be seaworthy at the time when first party is notified that the same are ready and at the time when first party is asked to hook on and when they break ground and that no inspection or acceptance by first party shall be deemed a waiver hereof.

(d) That it will be responsible for all lading, unlading and the moorings for barges and will save first party harmless with respect thereto; and that the obligation of first

party as to any tow shall end when tow arrives at destination up to moorings and made fast, and freight on each barge load shall be due and payable as soon as outturn weights are known and the empty barge is returned to Morris or other point of departure.

(e) That as to each tow, it will furnish first party with definite shipping instructions and enter into the first party's bill of lading as customarily used by first party in its general towage business from time to time and that it will have available mooring facilities at terminal points for all tows on arrival.

(f) That it will maintain full insurance coverage with a responsible underwriter or underwriters on all barges and cargoes with provisions in policies effectively preventing subrogation against first party, and exhibit said policies to [fol. 1522] first party at any reasonable times.

(g) That it will use no other towage facilities than those of first party for any of its business between St. Louis and any terminal or point at or near the northerly end of the Illinois Waterway or for intermediate points, except as hereinabove expressly provided in paragraph numbered 2(b): and in event of towage between points within the herein provided water limits for use of said barges other than Morris, Illinois, and South Chicago, Illinois, and points intermediate between Morris and South Chicago, the rates shall be first party's regular rate at the time when such towage occurs; provided: that in the event that the said four barges in full use and active movement are unable to handle the volume of tonnage in good faith offered to the second party, the second party may lease, purchase or charter additional barges, other than the four barges aforesaid, for such excess tonnage; provided, that first party shall have the option of furnishing any such additional barges, and second party shall secure them from first party if he desires to furnish them; and, as to such additional barges, first party shall have the right to have the towage thereof, whether furnished by him or another, on the same terms as herein provided for the four barges hereinabove first mentioned unless second party is unable to procure such additional barges without agreeing to let some other party furnish towage for such additional barges.

[fol. 1523] (h) That the said four barges shall be used only in the waters of the Illinois River and Waterway, and the Mississippi River between St. Louis and the mouth of the Illinois River.

(i) That in event second party has other towage business on the Illinois Waterway, first party shall have the option of exclusively doing also such other business than between the points above mentioned, at first party's customary rates and terms as they may exist at the time when such other business is to be done, subject to the provisions of paragraph numbered 2 (b) hereof.

3. Second party contemporaneously with said towage agreement of December 10, 1938, delivered 23 notes as evidence of part of the consideration moving to first party for his assignment to second party of his rights in said three barges identified as bearing operating numbers 216, 745 and 749. Second party has contemporaneously herewith delivered 24 notes payable to first party as evidence of part of the consideration moving to first party for his assignment to second party of his rights in the said fourth barge identified as bearing operating number 744. In event of default of second party in the payment of any of said notes according to the tenor and effect thereof or in the performance of any of its obligations, first party may but need not repossess any or all of the said barges either at the same time or at different times and one or several exercises of [fol. 1524] this power of repossession shall not exhaust it; and for the purpose of such repossession, first party, his agents, servants and attorneys, may, using such force as is necessary, enter upon said barges or any or either of them or any pier, wharf or premises at any time. Such repossession shall terminate all rights of second party in any barge or barges repossessed. The prompt payment of said notes and the prompt performance of the obligations of second party shall be of the essence hereof.

Provided, however, that when the 23 notes executed by second party contemporaneously with the execution of said towing agreement and assignment of December 10, 1938, have been fully paid, second party may obtain a bill of sale from the Dravo Corporation as to Barges Nos. 216, 745 and 749 as provided in the bailment lease assigned to second party by said assignment and thereafter this agreement shall not be effective as to said Barges Nos. 216, 745

and 749, except as to the towage provisions herein contained.

In event of any default of the second party in the payment of any of said notes, all of the said notes shall at once become due at the option of first party. Provided: that in event of the repossession of any barge or barges by first party, second party shall receive a credit for each barge repossessed upon unmatured notes only, last falling due, in an amount that bears the same proportion to the deferred balance of the price of such barge or barges so repossessed and evidenced by notes, as the unexpired por- [fol. 1525] tion of the term of this agreement bears to the whole term thereof; and further provided: that such credit shall be reduced by the reasonable costs and expenses of effecting such repossession; and further provided: that this provision shall under no circumstances create an obligation on first party to make any payment to second party, but, at most, give rise to a credit as aforesaid if said notes remain unmatured and unpaid in an amount equal to or greater than the credit above provided for.

4. Second party shall make its payments of the notes mentioned in the next preceding paragraph numbered 3 hereof at the Farmers State Bank, Sheffield, Illinois. Said bank shall treat each such payment as a trust fund to pay therefrom, in so far as the same may be needed or will extend, to Dravo Corporation in Pittsburgh, Pennsylvania, amounts, if any, which in the month in which payment at said bank of said notes should be made, fail due to said Dravo Corporation from first party on account of the barges herein mentioned, rendering the overplus, if any, to first party. At the day of maturity of any of said notes of second party, first party shall cause such note to be at said bank, so that the same may be returned to second party if then paid. The obligation of second party to pay said notes may be proportionately abated only by credit arising as to unmatured notes upon repossession of a barge or barges by first party as hereinbefore provided; and subject to such abatement the obligation of second party upon [fol. 1526] said notes shall be a trust, primarily to discharge the amounts of installment payments from first party to be made to said Dravo Corporation under the bailment leases of October 18, 1938, and October 25, 1938, mentioned in said contemporaneous instrument and in said

assignment of December 10, 1938, in so far as the said notes of second party extend and may be needed therefor; and each payment of said notes shall be treated as a trust as hereinabove provided: provided, that first party may at his sole choice otherwise wholly or partly satisfy any or all of the said installment payments from him to Dravo Corporation, thereby, to the extent of such other satisfaction, relieving his right to said notes of second party and their proceeds from any trust whatever, and entitling himself thereto.

5. Second party agrees to perform all the terms of the bailment leases of October 18, 1938, and October 25, 1938, mentioned in said contemporaneous agreement, and in said assignment of December 10, 1938.

6. It is hereby agreed by and between the parties hereto that when second party has fully paid all of the 23 notes executed by it contemporaneously with said towage agreement and assignment of December 10, 1938, and if, at said time, said second party has also paid all of the 24 notes executed by it simultaneously herewith which have then become due and if, at said time, second party has fully com- [fol. 1527] plied with all of the other covenants and provisions hereof and the covenants and provisions of said towage agreement and assignment of December 10, 1938, and when said Dravo Corporation has been fully paid all of the moneys due to it under said bailment leases of October 18, and October 25, 1938, the second party shall exercise its option to purchase from the Dravo Corporation said Barge No. 744 for the sum of $10 as provided in the bailment lease of October 25, 1938, and hereto assigned to second party contemporaneously herewith. Immediately after acquiring title to said Barge No. 744, second party shall execute to first party a first preferred ship mortgage conforming to the statutes of the United States of America in such case made and provided upon said Barge No. 744 for the purpose of securing such of said 24 promissory notes executed simultaneously herewith as may then remain unpaid.

7. Until all of said 23 notes executed by second party contemporaneously with said towage agreement and assignment of December 10, 1938, are paid by second party according to the tenor and effect thereof, second party shall

have no other right in said Barges Nos. 216, 745 and 749 save the right of possession, which shall be terminated by any attempt by second party to alienate or encumber the same or any seizure thereof by or under color of legal authority or by the adjudication in bankruptcy of said second party or by the filing of a petition for debtor reorganization by the second party or by insolvency of second party; [fol. 1528] and until second party has acquired title to said Barge No. 744 by exercising its option to purchase the same from the Dravo Corporation, as hereinabove provided, second party shall have no other rights in said Barge No. 744 save the right of possession, which shall be terminated by any attempt of second party to alienate or encumber the same or any seizure thereof by or under color of legal authority or by the adjudication in bankruptcy of said second party or by the filing of a petition for debt or reorganization by second party or by insolvency of second party. After second party has acquired title to said Barge No. 744 and executed a first preferred ship mortgage as hereinabove provided, said first party shall have no rights whatsoever in and to said Barge No. 744 except such rights as it shall acquire by reason of the terms and provisions of said first preferred ship mortgage, and thereafter this agreement shall not be effective as to said Barge No. 744 except as to the towage provisions herein contained.

Witness the hand and seal of the first party and the hand and seal of the second party and its signature by its lawfully authorized officer this first day of June, 1939. A. L. Mechling, doing business as A. L. Mechling Barge Lines, first party, By A. L. Mechling (Seal).

Allied Barge Corporation, By O. B. Robbins, its President. (Corporate Seal attached) W. H. Allen, Secretary.

[fol. 1529] State of Illinois,
County of Grundy, ss:

I, G. C. Ragan, a Notary Public in and for said County, in the State aforesaid, do hereby certify that A. L. Mechling, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of June, A. D. 1939.

G. C. Ragan, Notary Public.

State of Illinois,
County of Grundy, ss:

I, G. C. Ragan, a Notary Public in and for said County, in the State aforesaid, do hereby certify that O. B. Robbins and W. H. Allen, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as the President and Secretary, respectively of Allied Barge Corporation, a corporation, and known to me to be such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed, sealed with the corporate seal of said corporation and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth. [fol. 1530] Given under my hand and notarial seal this 13th day of June, A. D. 1939.

G. C. Ragan, Notary Public.

This writing, made and entered into in duplicate this 10th day of December, A. D. 1938, by and between A. L. Mechling, doing business as A. L. Mechling Barge Lines, first party, and Allied Barge Corporation, a corporation organized and existing under and by virtue of the laws of the State of Illinois, second party, Witnesseth: That the said parties have for the considerations herein mentioned agreed and do hereby agree as follows, that is to say:

Recitals: First party owns and operates towboats on the Illinois River and Waterway, and owns rights in three certain barges, and desires to furnish the towage required by second party for barges at any time to be owned or controlled by second party on the Illinois River and Waterway.

Second party now owns or controls no barges and desires to engage in the business of furnishing barges at Morris, Illinois, for transportation of grain and beans in bulk in the waters of the Illinois River and Waterway and Mississippi River between St. Louis, Missouri, and South Chicago, Illinois, and intermediate points, and desires to acquire the rights of first party in the said three barges.

By contemporaneous instrument first party, as part of [fol. 1531] this transaction, has transferred his rights in

said three barges to second party, and by said contemporaneous instrument, as part of this transaction, second party has assumed obligations as therein expressed.

Consideration: The consideration hereof is the said transfer of the rights of first party in said barges, the obligations of second party assumed in said contemporaneous instrument, and the mutual covenants of the parties herein expressed.

Term: This agreement shall remain in force until November 10, 1940.

Covenants: 1. First party agrees that during the life of this agreement he will own, charter or control a towboat or towboats capable of moving said three barges from Morris to Chicago and return at times when the same are ready and movement thereof may be reasonably requested by second party. It is understood that first party has and will have different customers from time to time, including second party, and that such towboat or towboats need not be held or used exclusively or preferentially for second party's towing, but during the life of this agreement such boats shall be used for second party's towing, under such bill of lading form as first party may from time to time customarily use in his business, as part of first party's general towing business, along with first party's other customers without any discrimination against second party with respect to [fol. 1532] times of making towboat available or otherwise; provided, that first party's undertakings in this paragraph numbered one shall not be conditions in any respect of any obligation of second party assumed in said contemporaneous agreement or otherwise.

Q. Second party agrees: (a) That it will pay first party for all grain, except oats, and beans, moved between Morris, Illinois, and South Chicago, Illinois, by means of first party's towboats, the sum of one cent per bushel outturn weights; and eight-tenths of a cent per bushel outturn weights for all oats moved by means of first party's towboats between Morris, Illinois, and South Chicago, Illinois.

(b) This agreement primarily contemplates the movement of loaded barges from Morris to South Chicago and return of empty barges to Morris. If, however, second party requests first party to deliver barges at the Santa Fe house on the South Branch of the Chicago River while on the way into South Chicago with a tow, second party shall

pay first party therefor at the rate of eight dollars an hour for the time between the Sag Junction and the Santa Fe house and return without tow and in addition the aforesaid price per bushel in event of any such barges being laden. In event the towboats of first party are out of service or the second party is compelled for some special reason to move said barges more quickly than first party would be able to move them in the line of his usual service to his customers, then in either of those events, second party, if not in default [fol. 1533] hereunder, may give first party written notice addressed to him and at 110 Willow Avenue, Joliet, Illinois, specifying the number, lading, destination and location, which shall be a single location, of such barges as to which such reason exists and for the reason; and in event the barges mentioned in said notice are seaworthy and the insurance provisions hereof are fulfilled with respect to them and their cargo, then if first party fails within 48 hours next after the receipt of such notice to bring his towboat to said location and hook on to such tow (providing second party has first complied with all of the provisions hereof), then under those circumstances second party may make other arrangements for moving said barges on the trip mentioned in such notice without liability to first party: provided that only one such notice shall be given in any one period of 96 consecutive hours.

(c) That all barges shall be seaworthy at the time when first party is notified that the same are ready and at the time when first party is asked to hook on and when they break ground and that no inspection or acceptance by first party shall be deemed a waiver hereof.

(d) That it will be responsible for all lading, unlading and the moorings for barges and will save first party harmless with respect thereto; and that the obligation of first party as to any tow shall end when tow arrives at destination up to moorings and made fast, and freight on each barge load shall be due and payable as soon as outturn [fol. 1534] weights are known and the empty barge is returned to Morris or other point of departure;

(e) That as to each tow, it will furnish first party with definite shipping instructions and enter into the first party's bill of lading as customarily used by first party in its general towage business from time to time and that it will have

available mooring facilities at terminal points for all tows on arrival;

(f) That it will maintain full insurance coverage with a responsible underwriter or underwriters on all barges and cargoes with provisions in policies effectively preventing subrogation against first party, and exhibit said policies to first party at any reasonable times;

(g) That it will use no other towage facilities than those of first party for any of its business between St. Louis and any terminal or point at or near the northerly end of the Illinois Waterway or for intermediate points; except as hereinabove expressly provided in paragraph number 2 (b); and in event of towage between points within the herein provided water limits for use of said barges other than Morris, Illinois, and South Chicago, Illinois, and points intermediate between Morris and South Chicago, the rates shall be first party's regular rate at the time when such towage occurs; provided: that in the event that the said three barges in full use and active movement are unable to handle the volume of tonnage in good faith offered [fol. 1535] to the second party, the second party may lease, purchase or charter additional barges, other than the three barges aforesaid, for such excess tonnage; provided, that first party shall have the option of furnishing any such additional barges, and second party shall secure them from first party if he desires to furnish them; and, as to such additional barges, first party shall have the right to have the towage thereof, whether furnished by him or another, on the same terms as herein provided for the three barges hereinabove first mentioned unless second party is unable to procure such additional barges without agreeing to let some other party furnish towage for such additional barges.

(h) That said three barges shall be used only in the waters of the Illinois River and Waterway, and the Mississippi River between St. Louis and the mouth of the Illinois River.

(i) That in event second party has other towage business on the Illinois Waterway, first party shall have the option of exclusively doing also such other business than between the points above mentioned, at first party's customary rates and terms as they may exist at the time when

such other business is to be done, subject to the provisions of paragraph numbered 2(b) hereof.

3. Second party has contemporaneously herewith delivered 23 notes as evidence of part of the consideration moving to first party for his assignment to second party [fol. 1536] of his rights in said three barges. In event of default of second party in the payment of said notes according to the tenor and effect thereof, or in the performance of any of its obligations, first party may, but need not, repossess any or all of the said barges either at the same time or different times and one or several exercises of this power of repossession shall not exhaust it; and for the purpose of such repossession first party, his agents, servants and attorneys, may, using such force as is necessary, enter upon said barges or any or either of them, or any pier, wharf or premises at any time. Such repossession shall terminate all rights of second party in any barge or barges repossessed. The prompt payment of said notes and the prompt performance of the obligations of second party shall be of the essence hereof.

In event of any default of the second party in the payment of any of said notes all of the said notes shall at once become due at the option of first party. Provided; that in event of the repossession of any barge or barges by first party, second party shall receive a credit for each barge repossess upon unmatured notes only, last falling due, in an amount that bears the same proportion to $6,432.81 as the unexpired portion of the term of this agreement bears to the whole term thereof; and further: provided, that such credit shall be reduced by the reasonable costs and expenses of effecting such repossession, and further: provided, that [fol. 1537] this provision shall under no circumstances create an obligation on first party to make any payment to second party, but, at most, give rise to a credit as aforesaid, if said notes remain unmatured and unpaid in an amount equal to or greater than the credit above provided for.

4. Second party shall make its payments of the notes mentioned in the next preceding paragraph numbered 3 hereof at the Farmers State Bank, Sheffield, Illinois. Said bank shall treat each such payment as a trust fund to pay therefrom, in so far as the same may be needed or will extend, to Dravo Corporation, in Pittsburgh, Pennsylvania,

amounts, if any, which in the month in which payment at said bank of said notes should be made, fall due to said Dravo Corporation from first party on account of the barges herein mentioned, rendering the overplus, if any, to first party. At the day of maturity of any of said notes of second party, first party shall cause such note to be at said bank, so that the same may be returned to second party if then paid. The obligation of second party to pay said notes may be proportionately abated only by credit arising as to unmatured notes upon repossession of a barge or barges by first party as hereinbefore provided; and subject to such abatement the obligation of second party upon said notes shall be a trust, primarily to discharge the amounts of installment payments from first party to be made to said Dravo Corporation under the bailment leases of October 18, 1938, and October 25, 1938, mentioned in [fol. 1538] said contemporaneous instrument, in so far as the said notes of second party extend and may be needed therefor; and each payment of said notes shall be treated as a trust as hereinabove provided; provided, that first party may at his sole choice otherwise wholly or partly satisfy any or all of the said installment payments from him to Dravo Corporation thereby, to the extent of such other satisfaction, relieving his right to said notes of second party and their proceeds from any trust whatever, and entitling himself thereto.

5. Second party agrees to perform all the terms of the bailment leases of October 18, 1938, and October 25, 1938, mentioned in said contemporaneous agreement. In event first party defaults in his installment payments to Dravo Corporation under said bailment lease of October 25, 1938, second party, after first giving first party notice in writing, which notice shall be fifteen days notice or until Dravo Corporation takes steps to repossess the barges mentioned in said lease of October 25, 1938, whichever is shorter, shall itself make said default good, and upon making such default good, second party shall succeed to all of first party's rights in barge 744 mentioned in said bailment lease of October 25, 1938; provided, that first party at any time within one year next after the first payment by second party to make good such default, if any, by repaying to

second party any and all amounts it has paid to make good defaults of first party in installment payments under said [fol. 1539] bailment lease of October 25, 1938, with interest at 5 per cent annually from the time of the payment thereof by second party to Dravo Corporation, to the time of repayment thereof by first party to second party, may redeem all his interest under said bailment lease of October 25, 1938, and revest himself therewith. This right of redemption is not assignable by first party without second party's consent, and adjudication of first party in bankruptcy shall be considered an assignment thereof.

6. Until all of the said notes are paid by second party according to the tenor and effect thereof, second party shall have no other right in said barges save the right of possession, which, until payment of all said notes according to the tenor and effect thereof, shall be terminated by any attempt of second party to alien or encumber the same, or by any seizure thereof by or under color of legal authority, or by the filing of a voluntary petition for adjudication of bankruptcy of second party, or upon adjudication of bankruptcy of second party as a result of the filing of an involuntary petition in bankruptcy against the second party, or by the filing of a petition for debtor reorganization by or for the second party, or by insolvency of second party.

Witness the hand and seal of the first party and the seal of the second party and its signature by its lawfully authorized officer this 10th day of December, A. D. 1938.

[fol. 1540] A. L. Mechling, doing business as A. L. Mechling Barge Lines, First Party, By A. L. Mechling. (Seal.)

Allied Barge Corporation, By O. B. Robbins, its President. (Corporate seal attached.) Attest: W. H. Allen, Secretary.

[fol. 1541] By Mr. Root:

Q. Mr. Mechling, how far is it from Morris, Illinois; that is the Finnegan and Allied Elevators, to the elevators at South Chicago, by way of the Illinois Waterway?

A. 68 miles.

Mr. Root: That is all.

Recross-examination.

By Mr. Enoch:

Q. Mr. Mechling, you remember, you told me that this was the only form of bill of lading you used, referring to exhibit 49?

A. At the present time, yes.

Q. How long have you been using this form of bill of lading; when I say form, I mean the bill of lading with all of the terms and stipulations on it that are set out on exhibit 49?

A. Sometime during the year of 1939 I adopted that bill of lading.

Q. What kind of bill of lading did you have prior to that?

A. I had a little simpler bill of lading; it did not have as many stipulations on it as that has. I cannot tell you just what it is, because I haven't got a copy of it here.

Q. Can you tell me approximately the time when you adopted this form, speaking of exhibit 49?

A. No, I cannot.

Q. Early in the year 1939?

A. I would say about the middle of the year, along about July or August, as I recall.

[fol. 1542] Q. What was the occasion for the change?

A. Well, we ran out of our bill of ladings; and we felt for sometime that we ought to have a little better style bill of lading; and I had my attorney draw that bill of lading up.

Q. Was that the attorney who gave you the advice to which reference was made yesterday?

A. Yes. Well, it was from the same office, not the same attorney.

Q. Now, if you were to get any business under terms which would constitute a departure from the terms set out on exhibit 49, what bill of lading would you use?

A. Well, if it was necessary to make a departure, I may have made some exceptions on that bill of lading.

Q. Have you ever made any exceptions on the bill of lading of which exhibit 49 is a copy?

A. Not since I started to use it.

Q. Have you a traffic soliciting force?

A. I am the traffic soliciting force myself. I am personally acquainted with all of my customers, and they are

acquainted with me; and I have a very small outfit and I manage it myself.

Q. When you answered Mr. Belnap about soliciting business down on the river, you referred to your own activities, personally?

A. That is right; my own personal activities.

Q. When you deliver barges, or grain loads of barges to the consignee in Chicago, when do you get your charges; [fol. 1543] when are they paid?

A. They are paid after the unloading weights—I am paid on the unloading weights.

Q. How long after?

A. I would say abouf two or three days.

Q. Do you have any arrangements with any shippers now whereby you are paid on a weekly basis, or bi-weekly basis, or monthly basis?

A. No, sir. Now, we are paid for each individual load and it is unloaded.

Q. How long has that been the basis?

A. It has always been. Wait a minute; when I used to work for the Turner-Hudnut, they used to pay once a month. But now, since I have been coming into Chicago, it has always been paid as the barges are unloaded.

Mr. Enoch: That is all.

Exam. Taylor: Any other questions?

Mr. Cole: I have one more question: Mr. Mechling, you say you solicit the business; now, after you solicit the business, since you have had this document printed, do you issue either this document or have the man enter into a separate contract, like Allied?

A. In my testimony ahead of this I stated I did not have any other contracts with any other grain company, except this one with Allied. The only contracts I have when I haul [fol. 1544] grain, is that bill of lading.

Q. This bill of lading constitutes the only thing that you issue in the way of a contract or a document on any business that you have received after you solicit it; is that correct?

A. That is correct; and I solicit every elevator on the river.

Mr. Enoch: That is all.

By Mr. Day:

Q. This loan you have from Norris is not covered by a contract other than your written note?

A. That is all.

Q. Is it covered by a mortgage?

A. It is covered by a mortgage on two of the smaller barges.

Mr. Day: That is all I have.

Mr. Enoch: That is all.

Exam. Taylor: Is that all? (No response.)

By Exam. Taylor:

Q. Mr. Mechling, to clear up some questions, as I understand it, although you have two separate agreements, one for a certain period and another for another period with Allied Barge, nevertheless you use this same bill of lading, of which Exhibit 49 is a sample copy?

A. Yes, sir; I do.

Q. And the agreement states that you will use it?

A. The agreement states that they shall use the bill of lading that I customarily use in my towing business.

Q. That bill of lading would show them as a shipper?

A. It would show Allied Grain Company as the shipper, —Allied Co-operative Grain Dealers' Corporation.

[fol. 1545] Q. But in these bills of lading you do not show the rate, do you?

A. No.

Q. Although there is a place for the rate?

A. No, we do not show the rate in the bill of lading; it could be shown. There is no particular objection to it, but it just never is shown and never put on, that I know of.

Q. On those contracts?

A. It does not say that they have to.

Q. Your contract with Allied Barge Company, then, your rate is different than this you have mentioned of record?

A. In the contract with the Allied Barge Corporation it is the same price that we have been talking about here all of the time; namely, one cent for all grain, except 8/10ths of a cent for oats, and then handled in my own barges, they will pay me the going rate for grain shipped in my own barges.

Q. Which you stated on the record?

A. That is right; and in all cases use my bill of lading.

Q. Now, when you deliver the grain to the elevator in South Chicago, do you get a receipt for it from anybody?

A. No.

Q. What do you do with the copy of the bill of lading that you retain?

A. The Captain on the boat mails them in to me after the delivery has been made.

[fol. 1546] Q. You file that, do you, keep a copy of it?

A. I file that; yes, sir.

Q. I wonder if you could furnish us in 15 days, so that we may complete the record in this case, certain shipments that have previously been connected up, both as to the inbound and outbound movement through Chicago. Would that be a very difficult thing for you to do, if we gave you the shipper's name—if we gave you the information contained in these expense bills like this one in the docket?

A. What did you want, the bill of lading on that?

Q. The bill of lading, yes.

A. I think they are all——

Q. Do you think you could furnish them?

A. I could make a copy.

Q. I just want a copy of the original.

A. Copy of the original; yes, those bills of lading could be furnished. If you give me the date and where it was delivered—I would have to check all those.

Mr. Belnap: May we go off the record a minute?

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: Let the record show that Mr. Mechling is willing to furnish a copy of the original bill of lading covering a shipment forwarded November 29, 1939, by the Allied Barge Corporation to Lowell-Hoit and Company, [fol. 1547] South Chicago, Illinois, dated November 29, 1939, freight bill No. 271. The shipment was forwarded in barge No. 745. The next one is a shipment forwarded by Norris Grain Company from Sheffield, Illinois, November 29, 1939, in barge No. 7, unloaded at the Norris elevator: a shipment of corn. That is exhibit 34 on the present record.

Mr. Belnap: The first bill that you asked about was exhibit 32?

Exam. Taylor: Exhibit 32, correct. The origin of this latter shipment appears to have been Chillicothe, Illinois. Now, exhibit 35 of record shows a shipment over the Mechling Barge Line on April 7, 1939, from Patonville, Illinois, from Finlegan Grain Corporation, in barge No. 1108, shipped to Norris Grain Company, unloaded at Norris private and public elevator. Also from exhibit 29 of record, by the Mechling Barge Line forwarded by Continental Grain Company, Peoria, Illinois, November 17th, 1939, to themselves at South Chicago, Illinois, in Barge No. 745, unloaded in Rock Island Terminal elevator. Now, it will be understood that the witness will have ten days to furnish copies of the bills of lading referred to. Mr. Mechling, you do not have any arrangement or agreement with the Eastern roads in connection with grain moving over your line up to Chicago, for the eastern end of the haul?

The Witness: No, sir, I do not.

By Exam. Taylor:

Q. In connection with exhibit 32, which you were looking [fol. 1548] at a little while ago, I was wondering why it was that the Allied Barge Company receipts for the freight charges in connection with that shipment?

A. I do not just understand what you mean. I don't know, unless they used that for some former record that they had to.

Q. How are your freight charges collected?

A. Norris sends me a separate bill with my check, and the barge number on it, when they have the unloading weight; a statement, you might say, with my check after they receive the unloading weights.

By Mr. Belnap:

Q. Is that true as to corn handled in barges of the Allied Barge Corporation?

A. No; I don't know what their individual systems of recording are.

[fol. 1549] Q. Go back to the Norris situation: When at a Norris elevator you deliver grain handled in an Allied Barge Corporation barge, do you then get a check from Norris?

A. Yes; that is treated the same as my barge.

Q. You get a check from Norris?

A. Wait a minute; you say Allied Barge gets it——
Q. Allied Barge Corporation handling the grain.
A. Is it Allied Grain Company grain?
Q. Yes, and goes to Norris.
A. All right; Allied pays me, just as if it had been Continental or any other. See, that is not paid to me; that is paid to the Allied Barge Corporation. The Allied Barge Corporation, I suppose they receipt the bill and they turn around and issue me the check, because what they get is not the same amount I get. They take out the rent for the barge, which is perfectly legitimate. There is nothing wrong with that at all; that is just the way it should be.
Q. The point is, Mr. Mechling,—have you looked at Exhibit 32, which apparently covers a shipment in an Allied Barge Corporation barge, and then you made some statements about receiving a check direct from the Norris Grain Company; and I think that is where you misstate a fact.

Mr. Day: I object to a statement like that from Mr. Belknap.

Exam. Taylor: Let Mr. Mechling state on this record [fol. 1550] everything about this bill shown as exhibit 32.

The Witness: That is grain sold by the Allied Grain Company to Norris; it is their grain, and it is handled in their barge. Norris pay them for the grain I suppose, less the freight; and the freight is paid to the—now, I am kind of on the spot here; I am telling you what I think. They pay the freight to the Allied Barge Company, and they pay for the grain to the Allied Grain Company. The Allied Barge Company then pay me for towing their barge into Chicago.

By Mr. Belnap:

Q. The point is, Mr. Mechling, you receive nothing direct from Norris?
A. No, sir.

Mr. Day: Object to the question, as leading.—Tell the Examiner what the facts are; don't listen to Mr. Belnap's statement.

Mr. Belnap: I think the record obviously shows, when you read it, that there is some confusion. We all know what the facts are, and I am trying to do what I can to straighten it out.

Mr. Day: I think the Examiner is trying to set him right.

By Exam. Taylor:

Q. Have you stated everything about this?

A. Yes.

Q. It is shown at the bottom of page 11-39; paid to Mechling, per W. H. Allen; you did not receipt for that?

A. No.

[fol. 1551] Q. Well, how about the bill of lading that covered that; you signed the bill of lading?

A. I signed the bill of lading, yes. See, the way the bill of lading is handled, the elevators have my block of bills of lading. We have a mail box out at the dock. When my boat comes and picks up that barge, they sign the bill of lading, leave two copies, and they take one copy because that shows where the barge is going to go. That is their instructions; that is very satisfactory and I see no fault.

By Mr. Belnap:

Q. Might I inquire, Mr. Mechling, those barges are Allied's own barges which you placed their earlier; and the grain is loaded in the barge before your captain or pilot signs that bill of lading?

Mr. Day: Object to the question, as leading.

By Mr. Belnap:

Q. Will you just state what the true facts are, as to the time when the bill of lading is signed, in relation to the time when the barge is placed at the Allied for loading and the time when the grain is loaded, whatever the true facts are, you just state it.

A. I think that is all in the record, but I will repeat it; I will the whole operation——

Q. No, just that fact as to the placing of the barge.

Mr. Day: Let him make his own statement, now. Don't try to tell him what to say——

The Witness: I call the elevator to see if they got a [fol. 1552] barge load of grain. Yes, they have; they tell me all right, place a barge there. They load the barge; and after the barge is loaded, they make out a bill of lading and put it in the box, where my captain takes it and signs the bill of lading and leaves two copies, and takes one.

By Mr. Belnap:

Q. Is sometimes a barge there with grain in it for some time before a bill of lading is signed?

A. Yes.

Mr. Belnap: That is all.

By Mr. Day:

Q. Sometimes these barges contain loads for more than one elevator?

A. Very seldom.—You mean here in Chicago?

Q. Yes, going to Chicago.

A. That is not very general, but it does happen once in a while.

Q. For instance, the one covered by exhibit 32, which was oats and beans, and left Morris on the 25th of the month, and was unloaded of the oats at the Irondale elevator on the 27th; and two days later the barge unloaded some beans at the Norris elevator?

A. I think that probably if you check that up it would be over Sunday, or something; there is two days. Without a calendar, I don't know what those days were.

Q. You know yourself that the 30th was Thanksgiving, and that was on Thursday.

A. Well, that is the answer to it.

[fol. 1553] Q. That was the last Thursday of the month anyway?

A. Yes.

Q. You referred in the course of this later discussion to a barge 745; whose barge is that?

A. That is an Allied barge.

By Mr. Enoch:

Q. Mr. Mechling, I call your attention to exhibit 29, which purports to be your receipt to the Continental Grain Company dated November 18, 1939.

A. Yes.

Q. Who signed the original of which this exhibit 29 is a copy?

A. Well, they handle theirs just like Allied. That was receipted in my office.

By Exam. Taylor:

Q. By whom?
A. I imagine, by the secretary.

By Mr. Enoch:

Q. You mean your office at Joliet?
A. Joliet, yes.
Q. When was the form of the document prepared?
A. The form of the document is prepared in this particular case in Norris' office. I provide those there. I cannot make them out—well, that is Continental. No, now, it is different on Continental. These are made out in my office for Continental. We have not so far supplied them with any of those blanks. When we get the bill of lading we make out this freight bill in my office for Continental, and send that with their copy—no, their copy of the bill of lading is sent from the elevator; we send these four copies [fol. 1554] to the Continental elevator. They issue the check and send it with the copies back to me.
Q. The transaction represented by exhibit 29 was handled in the way you have described it?
A. Yes, sir.
Q. Now I call your attention to exhibit No. 33.
A. Yes.
Q. Now, I ask you where the form of that document was prepared, speaking of the original?
A. I furnished the forms to Norris' office; they make them out.

By Exam. Taylor:

Q. Norris Grain Company?
A. Norris Grain Company's office; they would have to mail me the weights. Just to save a little time, we furnish those to their office, they make them out and send them.

By Mr. Enoch:

Q. Was the original of exhibit No. 33 signed by you?
A. I suppose it was signed—no; let's see: They issue these, along with a statement of this particular barge load; and I sign that statement as having received the money.
Q. Is this a possibility: That this original of exhibit 33

is made out at the point of shipment, Henry, Illinois, or some down river office of Norris Grain Company?

A. No, I do not—it could be made out there.

Q. Has that been done?

A. It has been done; yes, that is the way the transaction [fol. 1555] should be done. And I have tried to keep supplies of these freight bills at these local elevators; but they at times run out.

Q. At the origin point?

A. That is right.

Q. Then the Norris Grain Company, by whoever the shipper happens to be, makes out a form of bill of lading, and form of receipt for you at the point of origin?

A. Yes.

Q. When the shipment identified on exhibit 33 came to Chicago, who paid you the freight charges?

A. Norris Grain Company paid the freight charges.

Q. Were you paid by check—were you paid at Chicago, or paid at origin point?

A. Well, it was—it could not be paid only on—they pay it on an estimate; that is, these freight bills have to be made out on an estimate, whereas I am paid on an unloading weight; it has to be all corrected as soon as the barge is unloaded.

Q. Do you get an original payment at the time the shipments start from the origin point, and then later an adjustment is made?

A. No; they make the adjustment and then send me the check.

Q. Maybe the adjustment is the other way, you would have to send them a check; does that happen?

Exam. Taylor: I think he is confused.

[fol. 1556] The Witness: No, they make the adjustment and then mail me a check for the freight.

By Mr. Root:

Q. You do not get any money at all until the freight arrives; is that right?

A. That is correct.

By Mr. Enoch:

Q. What does this "Prepaid" mean?

A. I don't know.

Q. And what does "Prepaid" mean on exhibit 34?

A. I don't know; I am not familiar with just their method of handling of that thing. All I can say is that I don't know what their method is of handling it.

Q. You mean the Norris Grain Company?

A. That is right.

Q. Do you have any dealings with this representative whom we talked of yesterday, in Lowell-Hoit's office?

A. No.

Q. In so far as the freight charges due for the towing in connection with the shipment listed on exhibit 34, they were paid to you, as I understand it, at Chicago after the arrival of the shipment?

A. That is the time I got my check; I don't know just how they handle that in their office; I am not familiar with it.

Q. Is that the same situation on exhibit 35?

A. That is the way that has been carried on for quite some time.

Q. And the same is true of exhibit 36?

[fol. 1557] A. Yes, sir.

Q. Now, when you bring this barge into Chicago and deliver the barge to the elevator there, you are through with the transaction, are you not?

A. Yes, sir; that is as far as my contract goes.

Q. Except when they send the money to you a little later?

A. Yes, that is right.

Mr. Enoch: That is all.

Exam. Taylor: Is that all from this witness? (No response.) Any further cross-examination of this witness? (No response.) The exhibit is received.

(Exhibit 49, Witness Mechling, received in evidence.)

Exam. Taylor: The witness is excused.

(Witness excused.)

Exam. Taylor: The next witness.

C. E. Childe was sworn and testified as follows:

Direct examination.

By Exam. Taylor:

Q. Will you give your name to the reporter?

A. My name is C. E. Childe. I live at Omaha, Nebraska. I appear in this case as chairman of the traffic committee

of the Mississippi Valley Association, protestant. I have had that position for something over five years, and I have had something over 30 years' experience as a traffic representative of shippers in proceedings before the Interstate [fol. 1558] Commerce Commission and other bodies. I have made a study of the rates involved in this proceeding, and have compared—and have prepared some exhibits, which I have distributed. May these be numbered, off the record?

Exam. Taylor: Off the record.

(Discussion outside the record.)

(Protestant's Exhibits 50 to 58, inclusive, marked for identification.)

The Witness (Continuing): Exhibit No. 50 shows the average carload weight of grain, and also of carload freight as a whole terminating on class 1 carriers railroads in the Eastern District, in the year 1938, which in that respect is a typical year. The average weight, it will be noted, on each variety of grain is shown: Wheat, 44.4 tons; corn, 42.6 tons; oats, 31.6 tons; rye and barley, 39.5 tons. The average of all grain, wheat, corn, oats, rye and barley, 41.2 tons per car, as compared with the average loading of all carload freight in the Eastern District the same year, 36.9 tons. If wheat and corn alone were taken, the average weight per car would be 43.3 tons. That is not shown on the exhibit.

Exhibit No. 51 shows the earnings per ton-mile and per car-mile based on the average load of 41.2 tons for car-mile earnings; which, by the way, I am using throughout these exhibits as the average carload of grain in the Eastern District for the purpose of computing car-mile earnings. [fol. 1559] The earnings are shown on exhibit 51 for both the proportional rates which apply on grain from beyond, whether shipped by rail or water, and the so-called local rates which are proposed to apply on the ex-barge grain, but not on ex-rail or ex-lake grain. The rates are shown from Chicago, Peoria, and St. Louis to the typical destinations in Central Freight Association, Eastern Trunk Line, and New England Territories. On page 2 in the last section of the exhibit I show the average earnings per ton-mile and per car-mile on all freight in the Eastern District; also the average haul per railroad. I show in ad-

dition to that the average haul per railroad and the average earnings per ton-mile of the Great Lakes region and the central eastern region separately. The information is not available as to those regions separately as to car mile earnings. All freight, it should be understood, includes less than carload and carload revenue freight. The earnings for that per ton-mile and per car-mile would be somewhat less on carload freight if it could be computed separately. The only information available on that from the Commission's reports is that the less than carload freight in the Eastern District in 1938 was something less than two per cent of the total tonnage; and the revenue on the less than carload was something over 8 per cent.

This comparison is made to show that in relation to revenue freight as a whole in the Eastern District, and particularly as to the carload freight, the earnings on the [fol. 1560] present proportional rates on grain are higher than average, and the earnings on the local rates if applied to this grain would be very much higher than the average. I call particular attention to car-mile earnings shown in this and other exhibits which I shall offer here, because I believe they are more significant than the ton-mile earnings. The Commission has said in a recent decision in I & S 4645, for example, the Blackstrap Molasses case decided December 4th, 1939, that it is foolish to place reliance on ton-mile earnings, but car-mile earnings afford "A much fairer basis—" the Commission stated, "A much fairer basis is that found in the earnings found per car-mile and per train-mile." It will be noted that the car-mile earnings on grain are high indeed, as compared with the average on this exhibit.

By Mr. Enoch:

Q. What do you refer to as high car-mile earnings?

A. Car-mile earnings as shown on page 1 of exhibit 51, and the upper part of page 2, as compared with the car-mile earnings of 25.1 cents for the Eastern District as a whole.

Exhibit 52 shows earnings per ton-mile and per car-mile from Morris, Illinois, as a typical point of origin in Illinois west of Chicago, to typical destinations east of Chicago. These are the same destinations as appear in exhibit 51.

By Exam. Taylor:

Q. These are through rates, are they, from Morris to these destinations?

[fol. 1561] A. They are either the through rate or the lowest combination.

By Mr. Enoch:

Q. By through rate, I take it, you mean the single factor?

By Exam. Taylor:

Q. The joint through rate, or the combination; how did you construct your combination?

A. Taking the rail factor west of Chicago and adding it to the rail factor east of Chicago. The Morris rates are in every case, whether they are shown as single factor rates or not, the full combination of those eastern and western factors. In fact, that is true from all northern Illinois points of origin. The through rates are the combination, whether they are named as single factor rates or not.

Q. On the rate-break theory?

A. Yes, sir; they are all on the rate-break theory; using, however, as western factors either the proportional or in some cases what they call specifies.

By Mr. Belnap:

Q. Have you checked that out to all destinations, Mr. Childe, that very general statement you just made?

A. From northern Illinois?

Q. Yes.

A. I checked it out from all the points shown on Mr. Tannehill's exhibits; at least, I checked a great many of them; and if there are exceptions, I didn't find any. I call attention to the fact that the car-mile earnings as shown in exhibit 52 and the ton-mile earnings also, are on higher levels even than the earnings as shown on the rates from Chicago in exhibit 51.

[fol. 1562] Exhibit 53 explains why the rates for the longer distance Illinois producing points to the east are generally higher than the earnings from Chicago to the east. It shows ton-mile and car-mile earnings of the western factors of the through rates from representative Illinois points to Chicago. I have taken for representative points

in this exhibit the nearest and the farthest point on each railroad, as shown in Sperry's exhibit 13 in this proceeding. I think the exhibit is self-explanatory. Considering the two as parts of through rates, I think it is evident that earnings both per ton-mile and per car-mile are exceedingly high. I call your attention also to the block of rates at the right of the exhibit, headed 'Non-transit;' those are the Illinois intrastate or local rates which have been referred to in this proceeding. And it will be noted that considering those as parts of through rates, the earnings would likewise be very excessively high.

Witness Tannehill in his exhibit No. 11 made some comparisons of local grain rates from Chicago with the eastern class rate scale; and if what he termed the Western Trunk Line and Southwestern grain scales. Those so-called grain scales are not actual grain rates in Western Trunk Line and Southwestern Territories. Exhibit 54 is a comparison which shows the present domestic grain rates, local and proportional, from Chicago and the local rates from Morris to representative eastern destinations, and the percentage those rates bear to the actual class 1 rates. It will be [fol. 1563] noted that the Chicago local rates on grain range from more than 24 per cent to 18½ per cent of class 1. The average on the stations shown here as typical is over 20 per cent. The Morris local rates are an even higher percentage of class 1. They range from Illinois 28 per cent down to 20 per cent, an average of 24 per cent of class 1. The proportionals from Chicago range from 18 per cent to slightly under 15 per cent of class 1, and average about 17 per cent of class 1.

Exhibit 55 is a comparison of typical local and proportional grain rates as now in effect from points of origin in Western Trunk Line Territory to various markets, Chicago, Peoria, St. Louis, Kansas City, and Duluth, which were established as the result of the Commission's decision in the Western Grain case, including the general percentage increase. Those rates are compared with the class 1 rates, which are likewise rates prescribed by the Commission in the Western Trunk Line class rate case.

By Exam. Taylor:

Q. All rates you have shown to the present do include the percentage increase?

A. Yes, sir; they do. And they are actualiy in effect. Note that the local rates from the country points to markets in Western Trunk Line Territory are lower per cent of class 1 than the present rates from Chicago to the East in relation to Class 1. The range of the rates I have shown here as typical is from 16 per cent plus down to 13 per cent minus, which is very close to the percentage relationship the Chicago proportionals to the east bear to the class 1 [fol. 1564] rate. The proportional rates as shown on exhibit 45 in effect in Western Trunk Line Territory bear a much lower percentage relationship to class 1 than the local rates. The range is down as low as five and a fraction per cent, an average of less than 10 per cent of class 1; whereas the proportionals from Chicago to the east, as I have already stated, are about 17 per cent of class 1.

By Mr. Enoch:

Q. Sort of a pitiful situation, isn't it, when you refer to a rate as a high rate that is 17 per cent of first class?

A. Whom are you pitying, the people who have to pay them?

Q. Pity the railroads, the ones whom you know I am pitying.

A. I have not pitied anybody, so far. Before I leave exhibit 55, it might be well to note that what Mr. Tannehill called the Western Trunk Line scale in his exhibit 11 is in every case higher than the actual rates as shown on this exhibit.

By Mr. Day:

Q. What Mr. Tannehill called the Western Trunk Line scale prescribed by the Commission in the Western Grain case, isn't it?

A. No; they did not prescribe a scale; that is what I am trying to make clear. Taking exhibit 55, the Western Trunk Line scale, according to Mr. Tannehill, reading from Marshalltown down to Paynesville in the order shown on the exhibit would be 22, 22, 22, 23, 24, 26, 27, 28. You will notice that the actual rates are in every case less than 90 per cent of what he called the scale. As to the propor- [fol. 1565] tional rates, I will give just one illustration: Take Sioux City to Chicago, the first proportional rate shown; the Western Trunk Line scale in Mr. Tannehill's

exhibit for 498 miles would be 28 cents, whereas compared with a rate, with a 16 cent proportional rate. In other words, the proportional actually in effect there is 56 per cent of the so-called scale.

Mr. Enoch: May I interrupt to ask just what the purpose of this is?

The Witness: What do you mean?

Mr. Enoch: These last remarks of yours; is that refutation of something Mr. Tannehill said?

The Witness: No, that is in rebuttal of Mr. Tannehill's exhibit 11.

By Mr. Day:

Q. You understood Mr. Tannehill's scale to cover proportional rates, did you?

A. No. Exhibit 56 shows ton-mile earnings on the proportional rates prescribed by the Commission in the Western Grain case, increased 5 per cent.

By Mr. Bradford:

Q. Mr. Childe, may I inquire on exhibit 55 where you arrived at your mileages shown on the exhibit?

A. Yes; they were taken from an exhibit——

Q. Are they the short line mileages, made over the shortest possible routes over which a carload of freight can be taken?

A. They may be in some cases a mile or so off the short [fol. 1566] line; I did not check them, I took them from exhibit No. 92 in I & S 4208.

Mr. Enoch: Apparently nothing was right in that record.

The Witness: They may be slightly off, but they are approximately correct; and they are offered here at least to show approximately what the ton-miles are.

Mr. Bradford: What was referred to ordinarily in that case as the trick mileage.

The Witness: They may be tricky, but they are not far off. They are close enough to establish the point I have in mind here, that those proportionals are on a very much lower level than the proportionals east of Chicago. Exhibit No. 57, I have undertaken to show what would be reasonable rates on grain from Chicago and other gateways to the east, based on the following assumptions: First, that aver-

age earnings of 30 cents per car-mile would be reasonable. This is approximately 20 per cent higher than the average earnings of all freight in the eastern district, less than carload and carload, as I have shown on my earlier exhibit.

By Mr. Day:

Q. Which earlier exhibit, 51, page 2?

A. Yes, I think that is it. It follows, I think, that 30 cents a car mile would provide liberal average earnings if applied to grain, that being a low grade heavy loading staple commodity. And I took the figure 30 cents, instead of 25 cents, so as to allow for circuitous hauls, and every other con-[fol. 1567] tingency that I think might properly be considered in establishing a scale of reasonable rates on grain. The second assumption on which this scale is based is that the average loading weight is 41.2 tons per car. There again I think that that is a conservative figure, because average loadings out of Chicago to the east may reasonably be assumed as greater than the Eastern District as a whole.

Mr. Enoch: I think I will object to this type of testimony. I do not understand that you are contending, or your counsel, that there are before the Commission in this proceeding any issues relating to through rates from these origin points along the river to destinations in the east. You do not contend such issues as those were in there.

Exam. Taylor: Any reply to make to that? —The exhibit will be received for such value as it may have.

The Witness: (Continuing) Third, I assumed an average haul of 267 miles in the Eastern District. I arrive at this by taking 170.7 per cent of the average haul per railroad in the Eastern District, which was 156.4 miles in 1937. This 170.7 per cent being the percent for the United States as a whole which the average haul of all railroads as one system bore to the average haul per railroad.

By Mr. Enoch:

Q. May I ask, are these local rates you are talking about?

A. I am making a scale here for comparison with the rates here under consideration from Chicago and other gateways to the east.

[fol. 1568] Q. Local rates?

A. Local, proportional, or any other name you wish to apply to them.

By Mr. Day:

Q. Local or proportional, you said?

A. Yes. Fourth, I assume a progression of rates; that is, for long versus short distances on the basis of the proration of the eastern class rate scales would be reasonable. That is the relationship widely observed in rate progressions in the east today, both on classes and commodities. Taking for my assumed average haul of 267 miles 30 cents per car mile, that would make a rate in the block 261-280 miles of 10 cents per hundred pounds, yielding, you will notice, for 275 miles exactly 30 cents a carmile. I have shown, aside from this average haul, the rate only in 100 mile blocks, as I considered that enough to be illustrative. This progression of rates would yield per carmile earnings from 53.6 per 100 miles down to 15.1 cents for 1200 miles, figures being shown in the right-hand column of the exhibit. May I be off the record?——

Exam. Taylor: Yes, off the record:

(Discussion outside the record.)

Exam. Taylor: We will recess at this time until 2 o'clock, for luncheon.

(At 12:30 o'clock P. M. a recess was taken until 2 o'clock p. m.)

Afternoon Session

[fol. 1569] The hearing was resumed pursuant to recess.

2 o'clock P. M.

Exam. Taylor: Gentlemen, let us come to order. Proceed Mr. Childe.

C. E. Childe, resumed:

Direct examination:

The Witness (Continuing:) At the noon adjournment I had just finished explaining exhibit 57. If the scale I designed the reasonable rate or grain were applied from Chicago to the typical eastern destinations as shown in my preceding exhibits 51 and others, it would produce from Chicago to Detroit 10 cents, Columbus 10½ cents, Cleveland 11 cents, Pittsburgh 12½ cents, Baltimore 17 cents, Philadelphia 17½ cents, New York 18½ cents, Boston 19½ cents

per 100 pounds. Those rates are respectively the following percentages higher than the present proportional rate applying on ex-barge grain from Chicago: 55, 57, 68, 72, 35, 37, 40, 43. In other words, the present ex-barge proportionals or reshipping rates from Chicago are higher than what I have computed to be reasonable grain rates by the percentages just named.

By Mr. Enoch:

Q. You mean reasonable local rates?

A. Reasonable rates; I am not distinguishing between local and proportional in this study. The local rates from Chicago which are proposed to be applied on the ex-barge [fol. 1570] grain would be the following percentages higher than what I have just computed to be reasonable rates to the destinations named: 70, 90, 82, 128, 85, 85, 86, and 87. The book value of the roads of the Eastern District in the year 1937, as shown in Commission's annual statistical abstract, taking as book value the value of road and equipment, material, supplies and cash, amounted to $10,780,000,000, in round figures.

By Mr. Enoch:

Q. Is that figure set out in the report, the one you have just given?

A. Yes; they are shown under those heads. I can give you the total under those separate accounts, if you wish.

Q. No, all I am asking, is that computation basis on what the statistical abstract shows?

A. That is copied from the statistical abstract. The net railway operating income of the class 1 eastern carriers—I am taking class 1 eastern district in these comparative figures—was $247,193,951. That amounts to a rate of return of 2.3 per cent on the book investment as I have just given it. The freight service revenues, those revenues from freight service, the same carriers, the same year was $1,465,622,863. If all revenue freight were called upon to pay as much as 80 per cent over the average, which is comparable to what these local rates would yield on grain traffic, it would have increased for the year 1937 the net railway operating income by $1,172,498,290; and that would have produced a rate of return on the book value as I have just [fol. 1571] stated it exceeding 13 per cent.

I have not talked about export rates up to this time, which as the record shows are 16 cents Chicago to Baltimore, 16½ Philadelphia, 17½ to New York, proportional. Those rates are within a cent of what I have computed to be reasonable rates on grain from Chicago to those destinations. If export grain were loaded to an average of 43 tons per car, instead of 41.2, as I have shown to be the average of all grain, then under the present export proportional rates the earnings would be normal in comparison with that on all freight. That is to say, such export grain would pay then on a basis yielding as high revenues per car-mile as the average of all freight computed in the manner shown in exhibit 57.

My exhibit 58 is a comparison of barge-rail and barge-lake-rail rates from Morris, which I have again used as a typical Illinois River point of origin, with all rail and rail-lake-rail rates on grain to typical destinations in eastern territory. The water factors I have used were obtained by me from the Continental Grain Company, and will be explained in detail in an exhibit to be offered by Mr. Schimmel. I don't know personally what those rates were, and got them from inquiry; and I have used them because they will be in the record in that manner.

By Mr. Enoch:

Q. Are you setting out published rates here?

A. Not the all-water rates; they are not published. I [fol. 1572] have to obtain them by inquiry. I have shown, as you will note, some interior destinations beyond the Lake Erie ports; namely, Pittsburgh, Youngstown, Elmira and Scranton, as well as the Atlantic Ports, Baltimore, New York and Boston. I call your attention to the column at the extreme right showing the proposed barge and rail rates which are in every instances materially higher than the all rail rates from Morris to the same destinations; and, of course, very much higher than the rail-lake-rail rates or the barge-lake-rail rates. At present the barge-rail rates, it will be noted, are rather closely comparable with the rail-lake-rail and the barge-lake-rail.

By Exam. Taylor:

Q. They are not joint through rates, of course?

A. No; these are all combination rates.

Mr. Enoch: I do not wish to interrupt you too much; but will you tell me who is proposing these barge-rail rates?

The Witness: By that I mean taking the proposed factors east of Chicago; that is to say, the local rates from Chicago to these destinations and adding to that the water rate from Morris to Chicago of 3.875 per hundred.

By Exam. Taylor:

Q. That is not published?

A. No; it has been explained on the record here just what it is. That is what I call the proposed barge-rail rate.

By Mr. Enoch:

Q. Do you understand anybody in this case proposed it? [fol. 1573] A. Yes; I understand that is what the proposal is here.

Q. By whom?

A. By the respondents, to make the barge-rail rates come up to that basis. Exhibits 51 to 58 were prepared by me, or under my direction; and I think they are correct, and I offer them in evidence.

Exam. Taylor: Objections may be made to them.

Mr. Enoch: I want to object to such of these exhibits as contain data based on the assumption that there is a present barge rail rate, or that anybody is proposing a barge-rail rate.

Exam. Taylor: I asked him about that, and he told me it is an unpublished rate so far as Chicago is concerned——

Mr. Day: I want to object to the exhibits in so far as they purport to show distances, because there is no authority shown either for distances or for the routes, as required by the Commission's rules of practice.

The Witness: Yes, the tariff authorities for the mileages appear on here.

By Mr. Day:

Q. You say the tariff authority does appear?

A. Yes.

Q. Where is the tariff authority on exhibit 56, for instance?

A. I will make an exception of that. As I stated to Mr.——

Q. You haven't got it there, have you?

A. No; as I stated to Mr. Bradford, those were taken from Exhibit 92 in I & S 4208. I know they are approxi- [fol. 1574] mately correct. I do not have all these railroad distance tables, but I checked them with the distances in the official railway guide; and I know they are approximately correct.

Mr. Day: The Commission's rules of practice, may I suggest to the Examiner, require that where distances are indicated on an exhibit the tariff authority and junctions and distances between junctions should be shown.

Mr. Belnap: The Examiner, the respondents did not observe that rule.

Mr. Day: I object to any argument; but let us take up one thing at a time.

Mr. Belnap: It seems to me that what is sauce for the goose is sauce for the gander.

Mr. Day: There are several other exhibits that are constructed in exactly the same way.

The Witness: I think you are quite mistaken. What exhibit do you have in mind?

Mr. Day: Well, I will specify all of them: 55 shows no junctions or mileages between junctions.

The Witness: True, there aren't any junctions; nobody shows junctions in these exhibits, as far as I know, Mr. Examiner.

Exam. Taylor: Which other?—You say 55 and 54.

Mr. Day: I will tell you all of them: I specified 56 in the first instance; then 55, and then 54, 53, 52, and 51, all contain mileages without observing the Commission's rule.

[fol. 1575] Exam. Taylor: Well, as to 56 he refers to an exhibit in another case before the Commission. That gave the identical distance, didn't it?

The Witness: Yes. The exhibits also refer to the short line distances that Mr. Kelly put in for the eastern carriers in another proceeding, 26712. He did not specify in his exhibits the junctions, but he merely testified that those were the short line distances between the points in the east that he had in his exhibits. I am merely taking his own compilation, with those mileages. I have checked them with the distances shown in the respondents' exhibits in this proceeding, and they agree exactly in all but one or two cases, I noticed there was a very slight difference.

Mr. Day: On that, I submit that there is no similarity between Mr. Childe's exhibits and the exhibits submitted by the respondents in this case. I know nothing whatever about any other exhibit Mr. Kelly put in in some other case, or what that covered. In any case, it does not meet the objection I make as to non-compliance with the Commission's rules of practice.

Exam. Taylor: Mr. Childe, will you comply with the rules within ten days on these exhibits?

The Witness: I cannot tell what junctions were used by the respondents in this case, or in 26712, in computing their short line mileages. It would be physically impossible for me to go through all the computations necessary to supply [fol. 1576] that information.

Exam. Taylor: Well, the objection is overruled, and the exhibits will be received, subject to those objections; and the objections will be noted on the record.

Mr. Day: Exception will be noted also?

Exam. Taylor: Exception noted.

(Protestants' Exhibits 50 to 58, Witness Childe, received in evidence.)

Exam. Taylor: Is that all?

The Witness: That is all.

Exam. Taylor: Any questions by protestants?

Mr. Root: None.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Childe, do you or does your organization that you are here representing represent either the Norris Grain Company, Dewey Grain Company, Continental Grain Company, Allied Cooperative Grain Company, or the Finnegan Grain Company?

A. I couldn't tell you whether they are members of the association or not. I do know that the Norris Grain Company; that is to say, some of the Norris Grain interests have membership in the Mississippi Valley Association. Mr. Hunt, the president of the Farmers Grain Company there, and Mr. Allen, are not only members of the association but have representation on the traffic committee.

[fol. 1577] Q. Are any of these carriers on the Illinois waterway members like Mr. Mechling or this Hay Company, or the Allied Barge Company, or this Dewey Grain Company; are any of those members of your organization?

A. I don't know.

Q. These shippers that you mentioned were what firm, now, that was here, as a shipper along the waterway or a member of your organization; you said Norris?

A. The Farmers Square Deal Grain Company.

Q. You referred to him as a shipper?

A. You asked me if he was a member——

Q. No, I asked you whether any of the shippers of grain by the Illinois waterway are members of your organization; and then I went further and called out these names to you: Norris Grain, Dewey, Continental, Cooperative Allied Grain Dealers Association, Finnegan, or Cargill; were any of those members?

A. I don't know.

Q. You don't know whether any of those people are?

A. I told you I didn't know.

Q. On exhibit 11 you referred to what was there shown as the Western Trunk Line grain scale, and the Southwestern grain scale. When one speaks to you of the Western Trunk Line grain scale, what do you understand that person is talking about, Mr. Childe?

A. I would have to know more about it before I would say I understood what he was talking about. There isn't [fol. 1578] any such scale actually in effect.

Q. When one speaks to you of the Southwestern grain scale that is shown on exhibit 11, in column 10, what do you understand from that that that man is referring to?

A. The same answer.

Q. You wouldn't know in either event what the man is referring to?

A. Not unless I had more information to go by.

Q. Then from the exhibit merely showing in column 7 and column 10,—I believe that some of your exhibits would show that you called out at one time what the rates would be, did you not, if they were made on the basis of the Western Trunk Line scale and the Southwestern scale, on your direct?

A. Yes; that is what Mr. Tannehill characterized as those scales.

Q. Now, if you do not understand at all what a man refers to when he talks of the Western Trunk Line scale, or the Southwestern scale, how was it physically possible for you to compute anywhere what a certain other distant rate would be?

A. I took the rates Mr. Tannehill showed on his exhibit for comparable distances.

Q. Will you please show what rates are shown on Mr. Tannehill's exhibits that meet with the distance that you had on your direct testimony, where you said that?

A. Well, there are quite a number shown on there that come within the same mileage block.—What one do you have in mind?

Q. I don't know which ones you have in mind; you evi- [fol. 1579] dently computed some rates yourself, though, in your direct testimony; and you said if the Western Trunk Line scale were effective this would be the rate; and you said a certain rate.

A. Perhaps I can illustrate it this way: I referred to the rate from Sioux City to Chicago, proportional, 16 cents per 100 pounds, distance 498 miles. And I said that was 56 per cent of what Mr. Tannehill called the Western Trunk Line scale. If you will look on exhibit 11, Buffalo, New York, you will find the distance there shown 498 miles, Western Trunk Line scale 28 cents.

Q. Buffalo to what?

A. Chicago to Buffalo.

Q. 498 miles, check; now, go on down to——

A. Then go over on column 7, the same line as Buffalo; you will find the Western Trunk Line scale there shown is 28 cents.

Q. Yes.

A. So I took 28 cents as the Western Trunk Line scale for 498 miles, and computed the 16 cent rate from Sioux City to Chicago to be 56 per cent.

Q. Now, that is Sioux City to Chicago; what is that termed, what kind of a rate is that, Sioux City to Chicago?

A. That is a proportional rate.

Q. Is that a proportional rate?

A. Yes.

Q. Mr. Childe, were you in the Western Grain case?

A. Why, I was in some phases of it, I believe; I was not [fol. 1580] through the whole thing.

Q. And you were in the Southeastern Grain case?

A. Yes.

Q. Throughout?

A. No, I did not attend all the hearings.

Q. But in those Western Grain cases, did you ever hear anybody check a proportional rate, or try to arrive at a proportional rate by checking first any other kind of a grain scale, any direct mileage scale of a grain scale?

A. Well, I would hesitate to say that there was any conceivable comparison that was overlooked in any of those grain cases.

Q. For instance, you as a grain man, if you took column 7 in exhibit 11 and you found—represented any scale of grain rates for 498 miles, could you as a grain traffic expert compute what any kind of a proportional rate for 498 miles would be?

A. Not unless it was based on a scale; but I could make a comparison, of course. You do not limit your comparisons to specific rates. You can compare them with mileage rates, or anything you want to.

Q. Well, a proportional rate that breaks from say Chicago, a proportional rate east of Chicago, running to a destination that is 498 miles east of Chicago, would you gauge the level of that proportional rate as such, as a proportional rate now applicable on something else that came into Chicago upon any scale, whether we call it Western [fol. 1581] Trunk Line, or Southwestern scale of rates?

A. I would not use the scale of rates as proving that the proportional rate assessed to Chicago was either too high or too low, if that is what you mean. It does illustrate the fact, however, that proportional rates as such, to the extent they have been prescribed by the Commission, are invariably on lower levels than the so called local or gathering rates. The rate out of Chicago, or any market, which applies on grain that has come into that market from beyond, in my opinion, should be on a lower level than the local gathering rates from the country points into the markets. And the Commission in all the cases that I know about has agreed with that, and has definitely established proportional rates or rates applying on shipments from beyond on lower levels than the local rates applying on grain from the country into the market. That is why I thought Mr.

Tannehill's comparisons were inept, inappropriate in exhibit 11.

Q. When he refers there to Western Trunk Line grain scale, and to the Southwestern scale, and the general Southeastern Grain case, were those scales referred to quite frequently as a base for comparison?

A. I think what Mr. Tannehill has in mind is this: That in the Western Grain rate case the Commission used as a basis for the gathering rates from the country points into the markets a sort of a tentative scale. It never was a scale of rates applying as such on any traffic, but they com- [fol. 1582] puted a scale, sort of a measuring stick, as it were, for those country rates, the rates from the country into the market. But the rates they actually established were lower than those scales. That is what I am trying to make clear by these exhibits. Now, Mr. Tannehill, if I gather correctly what he is trying to show here on exhibit 11, is comparing what he calls those scales with the rates that you are trying to have approved for application from Chicago to the east.

By Exam. Taylor:

Q. On what kind of traffic?

A. On traffic coming into Chicago by barge. It seems to me the comparison is quite inappropriate.

By Mr Cole:

Q. But besides your view that the comparison is inappropriate, you do understand that there is such a thing as this Western Trunk Line scale and the Southwestern scale?

A. It is not in existence at all.

Q. Didn't I understand you just to say that that was the base, or furnished the base for comparison, or a base from which there was computed the rates from the country origins into the first markets in the west?

A. It was just a set of figures that was put down for comparative purposes and not used. I do not think a scale, so-called, is such a nebulous thing as that.

Q. The Ex-TM and the Ex-Northwest proportionals that we show in exhibit 11 from Chicago to Columbus, Detroit, Cleveland and Pittsburgh, do you know whether or not both [fol. 1583] the Ex-Northwest and the Ex-TM proportionals

east of Chicago were prescribed by the Interstate Commerce Commission?

A. Yes.

Q. They both were?

A. They were as I understand it. At least, I read the decisions; I did not participate in those Southwestern cases.

Q. On Exhibit 55 there is a rate shown of 20 cents for 324 miles from Chariton, Iowa, to Chicago, Illinois; right under that there is another rate of 19½ cents shown from Sheldon, Iowa, to Kansas City, Missouri, for 10 miles greater distance. Do you know what conditions existing in the west furnished the background for a different level of rates such as that?

A. Yes; the Sheldon, Iowa rate is no doubt a local rate from Sheldon to Omaha, plus the proportional from Omaha to Kansas City as the maximum.

Q. Then, Mr. Childe, some of these rates that you refer to as western rates, and that you point to as being lower than this nebulous Western Trunk Line scale, are not some of your rates composed of this local factor to the market plus the proportional that was effective between markets?

A. Well, let's see; the rate from Sheldon to Kansas City, the rate from Storm Lake, Iowa, to St. Louis, possibly from Paynesville, Minnesota to Chicago, might come in that category; that is, they might be combinations on markets. The others would not be.

Q. Well, wherever you have got Chicago as a destination [fol. 1584] you are going to have a combination of a local into some market and a proportional rate between markets?

A. No; take Marshalltown to Chicago, there wouldn't be any intervening markets there; or any other Iowa points to Chicago.

Q. Oh, no, not Iowa.

A. Take Grainfield, Kansas to Kansas City, there is no intervening market. The fact is, Mr. Cole, that the rates actually in effect in Western Trunk Line Territory from country points to the primary markets, whether there is any intervening market or whether it is just a straight country haul, are lower than the so-called scale shown in exhibit 11. These rates I have shown here on exhibit 55 are typical rates. I have a chart here, if you would like to see it, of several hundred rates which show that these levels I have indicated on exhibit 55 are fairly representative.

Q. Is it not generally a fact that when you talk about Western Trunk Line Territory, that the through charges would average about 90 per cent of what you term as that nebulous scale?

A. My computation shows less than 90 per cent, as I testified on direct.

By Mr. Brown:

Q. From where to where?

A. From and to the points shown on exhibit 55, in the upper half of the exhibit.

By Mr. Cole:

Q. Now, I understand that your theory back of the construction of these bases in your exhibits throughout would [fol. 1585] arrive one reasonable grain level of rate, is that it?

A. No; I am merely trying to test the reasonableness of the rates that are involved in this proceeding.

Q. Mr. Childe, your resulting level, would you call that a local level?

[fol. 1586] A. I would not characterize it as local or proportional. I would merely characterize it as a fair average revenue for the carriers in the Eastern District on grain, if we assume that grain should not pay any more than the average all-revenue freight.

Q. If your level of rate were to be put in as a local basis, would you then expect to see resulting a different proportional basis, somewhat lower than that applicable on various traffic moving into or from other territories?

A. Well, of course, I am not assuming that the scale which appears in my exhibit 57 is going to be applied generally throughout the Eastern District. Are you asking me now to assume it should be?

Q. Yes, I said assume that your scale that you proposed in your——

A. I did not propose a scale, understand; I am merely using that as a yardstick for testing the reasonableness of the rates that are involved in this proceeding.

Q. Well, now, let us suppose that the rate level that is shown on your exhibit No. 57 were made applicable east of Chicago on local traffic; would you then feel that it would be necessary or advisable for the carriers to make effective

certain other proportional rates east of Chicago, lower than this scale?

A. Why, that is possible; they might put in transit arrangements; they might do a lot of things.

[fol. 1587] Q. From your experience in the grain business, would you say that it would be absolutely necessary that there be certain other proportionals put in, which would vary from this local scale, if this were the local scale?

A. Necessary from the standpoint of the railroads?

Q. Necessary from the standpoint of transportation of grain?

A. No, I would not go that far.

Q. You do not believe that; then you would differ violently with the conclusions made by the Commission, in as far as the Grain Case, the Southwestern Grain case is converned, when they felt that it was absolutely necessary for the continued existence of the grain traffic that there be——

A. Are you quoting the Commission?

Q. Yes; I am quoting the Southwestern Grain case, 225 I.C.C.; the page number I have forgotten.

A. I would have to see the citation before I could answer that question. I doubt whether the Commission has said that it is absolutely necessary to have proportional rates; but if it said so, I would say the Commission is correct.

Q. In which event you would change your scale. You misunderstood me, that it was—the Commission's finding was such that it was absolutely necessary to have two proportionals east of Chicago, one Ex-Trans-Mississippi and one——

A. Oh, I see; that is different from what I understood your question to be.

[fol. 1588] Q. That is what I thought. That is all I have.

By Mr. Day:

Q. You testified that the rates in your exhibit 52 which are local rates from Morris to Eastern destinations, were higher than the rates shown on exhibit 51 from Chicago, Peoria, and St. Louis to eastern destinations?

A. I said they were higher in the yield per ton mile and per car mile.

Q. Well, you were comparing not the local with local, but the locals on exhibits 52 with the proportionals on exhibit 51; is that it?

A. Compare them with either one, and the statement would be true.

Q. All right; let us look into that a minute; on exhibit 52 you show that the earnings per car mile are 30.6 cents Morris to Boston?

A. Yes.

Q. On exhibit 51 you show the earnings to Chicago from Boston 31 cents?

A. Yes.

Q. So the earnings in exhibit 51 are higher in that instance?

A. Oh, not considering the difference—you mean that the figure 30.6 is lower than the figure 31; I will grant you that.

Q. Isn't the same true as to the rates shown to the other eastern points of Baltimore, Philadelphia, and New York?

[fol. 1589] A. Well, let us see; Morris to New York, car mile 32.5; Chicago to New York, local rate, car mile 31.9. There you see the figure 32.5 is the higher. Philadelphia—New York, the earnings are higher.

Q. Higher from Chicago?

A. No;—Philadelphia, that is true; Baltimore, it is not. Baltimore, you see, from Chicago is 34.1; from Morris, 36.2, yes. The figures speak for themselves, Mr. Day.

Q. And the movement under the rates shown in exhibit 51 would be—those points are reached by single line, are they not, from Chicago?

A. Well, let us see; they could be, yes. That is not always true.

Q. Every one of them on exhibit 51, for instance, except Boston, could be reached by the Pennsylvania direct, could they not?

A. I say they could be, yes.

Q. And every one except Baltimore and Philadelphia could be reached by the New York Central direct?

A. But bear this in mind: the eastern railroads do not and never have had any movement, and they do not have and they never have had any movement of grain from Chicago to these eastern destinations on local rates. Those local rates are purely fictitious, as far as moving any traffic is concerned.

Q. Aren't you taking a lot for granted?

A. I make the statement.

[fol. 1590] Q. Don't you know that the Chicago rate group includes a large grain-producing area?

A. Did I mention any group—I said Chicago. From Chicago the local rate is a fictitious rate.

Q. From the city of Chicago?

A. Right.

Q. All right; but so far as the points intermediate to Chicago, or points south of Chicago, or southwest of Chicago are concerned, there are a large number that take the Chicago rate and also produce a large amount of grain.

A. I would not go that far, no; there are some points in the Chicago rate group-so-called that have these local rates to the destinations shown on exhibit 51. How much traffic moves on those rates, I couldn't tell you.

Q. What do you mean by the Montfort mileage tables No. 3, shown on your exhibit 52?

A. Oh, that is a compilation of mileages which are published by a Mr. Montfort in Chicago.

Q. Is it on file with the Commission?

A. No; the only reason I ——

Q. Who is Mr. Montfort; tell us something about him.

A. He is the publisher of the mileage table.

Q. You don't know where he gets his mileage?

A. Yes, I know in a general way he compiles them from the railroad mileage tables.

[fol. 1591] Q. How do you know that?

A. Well, I have got the information directly and indirectly; I have checked a good many of them.

Q. By directly you mean you got it from him; he told you that he got it?

A. Well, yes; I got it by correspondence. I don't know whether I have had any personal conversations about it, or not.

Q. You wrote to him, though; and he told you that *he* is how he got it in part?

A. Oh, yes; it is easy to check it. Please bear this in mind: the only place where the Montfort mileage table was used was in order to get the rates from Joliet, Illinois, which did not happen to be shown on the railroad exhibits.

Q. Why didn't you show these Montfort tables from other points in your exhibits?

A. Well, the Montfort table, of course, and the railroad mileage table would be the best thing.

Q. What would Mr. Montfort have shown, for instance, if he was indicating the mileage from Churchill, Illinois, to Chicago, indicated on your exhibit 53?

A. In order to answer you I would have to look at the table; but I can say this from my general knowledge; that Mr. Montfort's mileage, if he showed one from Churchill to Chicago, would be the same as the railroad mileage table.

Q. He would show the short line mileage?

[fol. 1592] A. Oh, yes; he would show the short line.

Q. But you do not, do you?

A. Well, in what case?

Q. I am still talking about Churchill, for an example; on your exhibit 53.

A. The Churchill mileage, that I took from Mr. Sperry's exhibit; I explained that.

Q. And to get into Chicago over the New York Central from Churchill you would have to use the Kankakee Line to Schneider, Indiana; and then go north, wouldn't you?

A. I don't know; I merely took Mr. Sperry's mileages on exhibit 53, as I explained on my direct.

Q. You don't know what the Northwestern's direct mileage from Churchill would be?

A. No. I think I can answer you generally about exhibit 53 that those are the mileages via the routes shown on the exhibit. There may be a shorter mileage via some other route. In that event, of course, the per ton mile and per car mile figures on exhibit 53 would be correspondingly higher than what I have shown. What I have shown here would be the lowest possible ton mile and car mile earnings, if I have used the longer rather than the shorter route.

Q. You would not show the North Western mileage if Mr. Sperry had indicated it on his exhibit, from Churchill?

A. No; I took for each railroad as shown on the exhibit the [fol. 1593] shortest mileage and the longest mileage that Mr. Sperry had shown on his exhibit, so as to have a thoroughly representative showing of the stations Mr. Sperry used.

Q. Well, you only show Churchill once on the exhibit 53; by that you mean that he didn't show it but once on his exhibit?

A. He only showed it once, as the station on the New York Central, the farther distance from Chicago.

Q. But if he showed it on the North Western, you ignored that?

A. Oh, yes; I did not undertake to go any further than I have explained.

Q. The same way from Mendota; you used these various circuitous branch lines, instead of the Burlington direct into Chicago?

A. I used whatever he used.

Q. He showed the Burlington mileage too, didn't he?

A. Mendota is shown as the station on the Illinois Central because it is the point shown in Mr. Sperry's exhibit farthest distance from Chicago on the Illinois Central which takes a non-transit rate lower than the interstate or specific basis. Now, Mendota might be and no doubt is a station on the Burlington a shorter distance from Chicago. I am not trying to show short line mileages, but the range of distances on each railroad within which these rates apply. Now, there might not be another railroad serving a station on the Illinois Central this side of Mendota; and in that event the Mendota rate and mileage would approximately [fol. 1594] represent the lowest earnings of the Illinois Central.

Q. Well, the only point you show on the Illinois Central, outside of Mendota, was this town in the western suburbs of Chicago, Hillside, on the western line of the Illinois Central, 18 miles.

A. Hillside was taken because that is the station in Mr. Sperry's exhibit on the Illinois Central which is the closest to Chicago.

Q. You did not show any points on the Illinois Central's main north and south line out of Chicago?

A. That is obvious.

Q. And when you came to Minooka you took the Elgin, Joliet & Eastern, the so-called outer Belt route, instead of using the main line of the Rock Island Railroad; isn't that a fact?

A. I took Minooka on the Elgin, Joliet & Eastern again for the reason that it represents the longest haul over the Elgin, Joliet and Eastern for which Non-transit rates apply.

Q. You know the Elgin, Joliet & Eastern coming from Minooka encircles the Chicago area and runs over into Indiana?

A. Yes.

Q. Minooka is on the Illinois River, is it not, just a few miles outside of Joliet?

A. I don't know.

Q. How did you arrive at this 19 miles from Griffith, [fol. 1595] Indiana, to Joliet, via the Elgin, Joliet & Eastern; can you tell us what lines of the Elgin, Joliet & Eastern make a mileage of 19 miles from Griffith, Indiana, into Chicago?

A. That is Mr. Sperry's mileage; that is all I know about it.

Q. Now, Willow Springs, that you show twice, once on the Alton and once on the Santa Fe, is also a point on the Illinois River, or the Illinois and Michigan Canal, is it not?

A. I don't know.

Q. You don't know about that?

A. No.

Q. You don't know that Minooka is either?

A. I believe I so stated.

Q. And you do not know that Worth is on the Wabash?

A. That is correct.

Q. It is on the Calumet Sag Channel; you don't know that?

A. I know where very few of these stations are, exactly.

Q. You know where very few of them are? Is there any reason, in your opinion, why the rates from Willow Springs to the east should be any higher than by barge and rail from Morris to the east?

A. I have not undertaken to analyze the rate from Willow Springs to the east, other than to say that if Willow Springs is located on a railroad and not on a waterway that that constitutes the reason for a higher level of rates by rail as compared with water and rail, from the point served by water.

[fol. 1596] Q. Supposing it is on both the canal and the rail?

A. All right.

Q. 18 miles out of Chicago.

A. What is your question?

Q. Should the rail rate be higher than the barge and rail rate from Willow Springs to the east?

A. It depends on what the barge lines are willing to handle it for from Willow Springs to Chicago.

Q. In other words you think that the rate by barge ought to be lower?

A. If the barge line can profitably handle it on a lower basis, yes.

Q. Isn't it true that of these stations on exhibit 53 there are a number of others contiguous to the Illinois and Michigan Canal?

A. I don't know.

Q. Will you look at your exhibit 57; I do not understand the statement made there in numbered paragraph 3, that the average haul for Class 1 railroads in the United States in 1937 was 197.6 miles, and for all railroads as one system in 1937, 337.4 miles; can you give us reference to the Commission's statement where that 337.4 will be found and explained?

A. I can if you will give me a copy of the Commission's statistical extracts for 1937; I do not happen to have it with me.

[fol. 1597] By Exam. Taylor:

Q. But you did find it in there?

A. Oh, yes; it is in there.

By Mr. Day:

Q. Can you tell us what mileage as one system means?

A. Yes; it takes the total ton miles and the total tons, and divides the ton miles by the tons and gets an average haul.

Q. On exhibit 51, page 2, you omitted per car mile earnings for the Great Lakes and the Central Eastern region; do you have a figure for the Central Eastern region?

A. They publish the ton mile, but not the car mile; that is to say, they publish the basic figures.

Q. And you could have got it in the same way you obtained it for the eastern district as a whole?

A. No; I only give you the ton miles because the Commission does not give the car miles by regions.

Q. In the Eastern District, did you include the Pocahontas region?

A. No.

Mr. Day: That is all I have.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Childe, you are called here as a witness by the Mississippi Valley Association, intervener?

A. Yes.

Q. Did you in your direct examination state what the purpose of that organization is?

[fol. 1598] A. No; Colonel Randolph did that the first hearing.

Q. Will you tell me what it is, just briefly; I have forgotten.

A. It is an association in the Mississippi Valley states; that is, some 20 odd states in the basin and its tributary. The purpose is to promote the commerce and economic welfare in that region.

Q. There are no partial states in there, are there?

A. Well, there is no exact territorial limitation; if a man wants to come in from a point outside of the region, he would have to apply for a membership.

Q. Illinois?

A. Illinois is considered within the region, yes.

Q. Iowa?

A. Iowa; yes. All the states Ohio to the Rocky Mountains and the Canadian border to the north.

Q. Colorado?

A. Yes, Colorado and Oklahoma.

Q. Texas?

A. The same from Texas.

Q. As I understand it, then, your activities are devoted to the economic welfare of the people generally in that wide expanse of territory?

A. Yes, sir.

Q. And it is in furtherance of that purpose that you appear here as a witness in behalf of the Mississippi Valley [fol. 1599] Association?

A. Yes, sir.

Q. Is it your position that the growers of grain who are so located that the Illinois waterway is not available to them are profiting by these so-called lower costs on the waterway?

A. Yes.

Q. Did you say yes?

A. Yes.

Q. Have you analyzed that—do you get into the economics at all?

A. Yes.

Q. Have you analyzed that from an economic standpoint?

A. I think so.

Q. You think it benefits the farmer who is so located that the grain that he raises is not available——

A. Yes.

Q. Would you explain that, please.

A. There are a good many ways in which he is benefited.

Q. Give me the best ones.

A. I would have to give you quite a number, and let you choose your own. The grain which moves by water out of the Illinois Valley gets the farmer a higher price who ships it from the Illinois River Valley by water. That grain may go to Chicago to go to New Orleans, or the Pacific Coast, or somewhere else. But that grain tends to find broader markets at higher prices than if the waterway were not [fol. 1600] there. That means that the remaining grain that cannot use the waterway, must be shipped by rail, has just that much less grain to compete against in the area that is supplied by rail. Consequently the farmer who ships by rail would be able to get a higher price. Not only that; but as Mr. Burwell showed in his testimony, sometimes people who ship by rail have to come to the Chicago markets—Mr. Burwell complained he could not get it in the country. Why Mr. Burwell could not buy—when he could buy at the low prices in Illinois he goes to Chicago and becomes a bidder on the Chicago Board of Trade; and that additional bidding tends to raise the Chicago price to the man who ships to Chicago by rail as well as by water.

The farmers also benefit in that they opened a way which tends to increase the general prosperity in the territory; that means more people, more jobs, more income, and therefore better conditions for the farmers generally.

Q. I just want to know about this farmer who is not contiguous to the waterway.

A. That is what I am talking about.

Q. Isn't everything that you said predicated on the assumption that the man who ships by water must get to one consuming territory, and the man who ships by rail must go to another consuming territory?

A. It is a fact the man who ships by water goes to both. He goes to a wider area, and gets a better price.

[fol. 1601] Q. When the man who ships by rail has to go to the same consuming territory to which the man who ships by water must go, tell us how that man by rail is benefited by water lower transportation costs, so-called?

A. Well, I already explained one way he was benefited. If we assume that the man who ships by water goes to Chicago and the man who ships by rail goes to Chicago, the buyers remaining the same, the competition remains the same.

Q. I said consuming territory, not Chicago.

A. Well, you have to go to a market in order to talk about prices.

Q. No, I am talking about consuming territory in Central Freight Association.

A. Take a point; maybe I will follow you.

Q. Consumers down at Cleveland, Pittsburgh, Philadelphia.

A. All right; the consumer at Cleveland, Pittsburgh, or Philadelphia now has a choice of buying his grain and shipping it via lake or all-rail, or barge and rail, or truck. It doesn't matter to him how the stuff comes to him.

Q. I thought you were going to be fair with me; I will talk about Cincinnati: Let us talk about Illinois grain.

A. I will take Cincinnati, if you wish.

Q. Illinois grain.

A. Does he have to buy it from Illinois?

Q. Well, we are talking about two sets of farmers, those [fol. 1602] that are contiguous to the Illinois Waterway and those who are not?

A. My impression is that the man in Cincinnati can buy all-rail cheaper than he can get barge and rail. He would be out of this picture. The barge does not enter into his picture very decidedly, if at all, from Illinois. And this grain is moving all-water down the Illinois River, and up the Mississippi, and up the Ohio.

Q. What happens to the farmer who is not contiguous to the waterway and attempting to sell grain in competition with a farmer who is on the waterway, in a consuming territory which they both try to sell in?

A. That is what I started to talk about when I mentioned Chicago; that is a pretty heavy consuming point. Let us assume that the Chicago consumers are taking the grain that comes by water and by rail from Illinois: The price that they pay is not dependent on the form of transportation. I mean the price they pay at Chicago is not dependent on the form of transportation that is used.

Q. Has it anything to do with it?

A. As a practical thing, I would say generally no.

Q. You have got that hedged all right.

A. I am trying to be as accurate as possible. Because, let us take Morris, Illinois to Chicago, for example, and assume that is all moved by rail. The price at Chicago would be just the same, in my opinion, on any given day [fol. 1603] as if part of it moved by rail and part by water. The way it moves into Chicago is not what fixes the price; and therefore, the form of transportation is not going to alter the Chicago price.

Q. How about the point of origin price?—Assume that we may have 100 bushels of grain a piece about 60 miles outside of Chicago; and you get your grain to Chicago for 10 cents, and I have to pay 15 to get mine up there; how much less will I get for my grain than you get for yours?

A. 5 cents; but my rate is raised from the figure of 5 cents to 10 cents, or whatever you used; that would not give the rail shipper any more money. It would merely deprive the water shipper of the higher price.

Q. Isn't the farmer in Illinois who is not contiguous to the waterway exactly in the situation of the man who has the 15 cent rate to pay as compared with the other man who pays only 10 cents, by analogy to the man on the water?

A. The farmer who has the 15 cent rate is not as well off as the fellow who has the 10 cent rate.

Q. Is he in the same position as the gentleman to whom I refer?

A. Doesn't that answer your question?

Q. Well, you said you were going to get 5 cents more than I would, in the illustration that we had; now, won't the farmer in Illinois get 5 cents less, who is not contiguous to the waterway,—get 5 cents less than the man who is?

A. If you assume two men in Illinois, both paying the [fol. 1604] 15 cent rate into Chicago; and if you assume that one of those men gets his rate reduced to 10 cents; that man gets the benefit of 5 cents, but the man who paid the 15 cent rate is in the same situation as he was before.

Q. Have you answered my question?

A. I think so.

Q. Could you give me a yes or no answer to it?

A. I do not understand it is susceptible of yes or no.

Q. I said, is he in the same position?

A. The man who pays the rail rate is no different than he was before; doesn't that answer it?

Q. No.

Mr. Brown: Before what?

A. Before the man on the water got the rate reduction.

By Mr. Enoch:

Q. You realize you have not answered the question, don't you, Mr. Childe?

A. No, I do not; I tried to answer it.

Q. Your association is not opposed to the interests of these farmers who are not contiguous to the waterway, is it?

A. Certainly not.

Q. Wouldn't you be willing to make as much of an effort in their behalf, if occasion presented itself, as you appear to be making on behalf of these farmers here in Illinois that are contiguous to the waterway?

A. We try to represent the interests of everybody.

[fol. 1605] Q. The answer is yes, isn't it?

A. The answer is that we have no idea whatever of hurting the farmer who ships by rail, who is not on the waterway.

Q. Or who ships by any other means of transportation?

A. No.

Q. Aren't you willing to help him to the same extent you are willing to help a man that ships by water?

A. Certainly; but your point——

Q. I have not intended to confine it to rail shipping.

A. You gentlemen seem to think that the man who ships by railroad is hurt because somebody on a waterway gets a lower rate; I do not agree with that.

Q. What is the position of your association as to these farmers who sells to Mr. Bacon, a man who ships into Chicago by truck;—now, Mr. Bacon, complained here, I think, he had to pay if he moved outbound by rail a local rate on corn received by him by truck; what is the position of the Mississippi Valley Association on that?

A. We would be glad to see Mr. Bacon's trucked corn get a lower rate east. May I explain what I have in mind: The truck corn that comes into Chicago does not move out on local rates at all; it can't. It moves out now by water, or

is consumed locally. Now, if the railroads figure a rate which would permit that grain to move out of Chicago by rail, we would be glad to see it done.

[fol. 1606] Q. Do you think they should?

A. I think it would be in their interests to do so; I think that they should, yes.

Q. Should it be the same rate as you are asking the railroads to apply on ex-river grain?

A. Not necessarily; I would have to go into the question of truck rates more thoroughly, before I can answer you def-nitely. But I can answer this much; I think the so-called present proportional rates would be none too low for transporting grain that comes into Chicago by truck, or any form of transportation.

Q. Would be too low?

A. None too low.

Q. Just what would you go into, to find out what the measure of the proportional rate should be on an inbound truck movement?

A. Well, in the case of Chicago I would bear this in mind: That the so-called proportionals are in reality the highest rates the railroads get, or can get for hauling grain out of Chicago today. If they charge any higher than that they won't get the business. Therefore, if they want any business at all to move out of Chicago by rail, that comes in by truck, they had better apply those maximum rates; they cannot get any more. Those rates would pay them a very handsome profit; therefore I say you should apply the rates no higher than that.

Q. That would be the scope of your investigation, if you [fol. 1607] wanted to find out what level of the proportional rates to apply on inbound truck grain should be?

A. That is as far as I can go with you; right.

Q. Do you see any distinction between the grain that comes in by private truck and the grain that comes in by private barge, for the same distance?

A. You mean so far as hauling out of Chicago is concerned?

Q. Yes.

A. I think they are similar.

Q. Similar?

A. Yes.

Q. In all respects, are they not?

A. I would say outside of the fact one comes in in the form of one transportation and one another, it is the same grain.

Q. You were never in the grain business, were you, Mr. Childe?

A. No.

Q. And has not most of your experience in connection with grain rates been in cases where some waterway transportation has been involved?

A. Oh, I have represented grain shippers in other cases, involving rail rates.

Q. I said, most of it has been.

A. Well, I will have to count them up, to see; I have been in a good many of both kinds.

Q. Do you know what a true proportional rate is?

[fol. 1608] A. I think so.

Q. And what its purpose is?

A. Yes.

Q. Would you mind stating it?

A. Well, it has a good many purposes; the reshipping or proportional rates, if you want to call them such, out of Chicago are the same thing.

Q. I said true proportional rates?

A. Do you want me to assume that the rates out of Chicago are not true proportional?—I think a proportional rate, if you want my answer, is any rate which applies on traffic which has had prior transportation into the shipping point.

Q. Of any kind?

A. Of any kind.

Q. Did you ever know of a shipment that moved from any local point that did not have some kind and some degree of prior transportation?

A. Well, if you want to take by wagon or truck into an elevator, I would say that was true; yes.

Q. I am talking about moving it from, or a haul——

A. What I am talking about is transportation from one point other than a shipping point, some other station, if you please. The theory of the proportional rate is that if traffic really comes from some other station, that the rate outbound from the first station is in reality a part of a through haul.

[fol. 1609] Q. Through rate?

A. No, through transportation.

Q. Through rate too; would you say that?

A. Part of a through rate—I wouldn't go that far, no; part of through transportation. The Commission generally recognized the fact if traffic has had transportation from some other station and then goes on beyond, if the stopping point is simply a resting place, they might say that constitutes transportation from the origin to the final destination, then the movement from the stopping points to destination partakes of a part of through transportation and may reasonably be charged a lower rate on that account. That is the theory.

Q. But it is not a part of a through rate?

A. Not necessarily. Take for example—

Q. Would you say that the Commission had described it as such at least one hundred times in the last ten years?

A. Part of a through rate?

Q. Yes, or nothing at all.

A. They might have; but they have also described it as part of a through transportation.

Q. Now, on these rates which you suggest for application east of Chicago, you have not taken any position that the rates of corn should be different from the rates on wheat, have you?

A. East of Chicago?

Q. Yes.

[fol. 1610] A. No.

Q. And that the rates on the products should be any different than the rates on whole grain?

A. No; I am merely testifying the rates are in effect now.

Q. You are not testifying though in so far as they might properly apply on all commodities moving under the rates?

A. That is it; but so far as they might apply on corn which comes into Chicago by barge.

Q. Is it your position that the rate outbound from Chicago on corn inbound by barge should be on a different level from the rate outbound on some other grain, or products of grain?

A. My whole point is that you are now charging a certain rate which is reasonable in the sense that it pays you a very liberal return. You are proposing to increase that rate to a point that will be prohibitively high. My point is that the proposed rate is unreasonable; that is all I am——

Q. Aren't you assuming that it moves corn?

A. I am assuming that it moves grain.

Q. What is the average loading on grain, or the average loading on the products?

A. It depends on what you pick; do you want to include toasted corn flakes, or breakfast foods, or leave them out?

Q. You mean take them in the morning?

A. I mean include them in the computation.

Q. I mean include them in the transportation?

[fol. 1611] Exam Taylor: Recess for five minutes.

(A short recess was taken.)

Exam Taylor: I understand, Mr. Enoch, you have finished.

Mr. Enoch: That is right.

Exam Taylor: Mr. Bradford.

By Mr. Bradford:

Q. Mr. Childe, in answer to a question that Mr. Enoch asked, I believe you said your definition of a proportional rate was one that moved grain from a point at which the grain had come to rest, and where it had a prior transportation from some other point?

A. Yes; I did not limit it to grain, but speaking generally.

Q. Bearing in mind that the truck grain ordinarily comes from the farm to the market; is that correct?

A. That is not entirely true; there is quite a lot of truck grain that comes from towns, as well as farms.

Q. Any grain that comes from the farm to a market, you would take that grain out of there?

A. No, I would not go that far; if the grain moved a hundred miles, from a farm, I don't see why that should be any different from the grain that moves from a town.

Q. That is what I am trying to get at; you limited your proposition to grain, or a commodity that had movement from some other point?

A. From some other station.

[fol. 1612] Q. But now you would include grain that moved from the farm one hundred miles away?

A. I can see that a proportional rate might——

Q. Where would you set the limit, where the proportional rate would not apply?

A. I would probably take the grain within a local area that could not move from some other station, and exclude that; and leave it open for everything else that could move via some other form of transportation, or some other station.

Q. Then you have less consideration for the farmer that is nearer the market that might haul his stuff by truck?

A. No, I would like to see him get a fair rate, too.

Q. You would not apply that proportional rate to his business?

A. No; but I would like to see him get a fair rate, nevertheless.

Q. Mr. Enoch mentioned the town of Cincinnati, a dealer at Cincinnati drawing grain from a point in Illinois by rail as against grain moving from a point adjacent to this waterway; and I believe you answered on the proposition that the grain would be consumed in Cincinnati?

A. Not necessarily.

Q. What would be your answer on grain that moved through Cincinnati to a station like Baltimore, competing with grain that must originate on the waterway, and——

A. That would be such a circuitous haul to Baltimore.

Q. Do you think it is a circuitous haul from the south [fol. 1613] central part of Illinois to Cincinnati?

A. No; but the Illinois waterway does not get down there.

Q. Won't you concede that grain must compete with grain that is marketed——

A. I would say that Cincinnati would have to compete for it, rather than that grain has to compete with Cincinnati. The man who raises corn in southern Illinois will sell his corn wherever he can get the best price; that may be Cincinnati or San Francisco.

Q. But if the rate from southern Illinois to Baltimore through Cincinnati is higher than the rate from southern Illinois through Chicago, or higher than the rate on grain produced on the waterway, wouldn't the price paid at Cincinnati or any place between southern Illinois and Baltimore, be less than the price on the corn that was produced in southern Illinois on the waterway?

A. No.

Q. Why wouldn't it?

A. The man at Cincinnati or Baltimore pays a price on grain, regardless of the form of transportation by which that grain is transported to destination.

Q. Do you know that to be true?

A. That is, generally.

Q. Did you ever market grain?

A. I have had quite a lot of experience, as you have, in [fol. 1614] observation.

Q. Did you ever sell a car of grain?

A. I never sold a car of grain in my life.

Q. You don't know the answer then—now, I believe you mentioned one of the places where the farmer benefited, one of the means that the barge line benefited the farmer was to the Pacific Coast; is that correct?

A. Yes.

Q. Are you familiar with the old adjustment of freight rates from Nebraska and South Dakota to the Pacific Coast?

A. Yes.

Q. Do you know when the barge line down the Mississippi River and the movement through the Panama Canal displaced the corn from South Dakota and Nebraska going to the Pacific Coast?

A. Yes.

Q. Do you know if on the Omaha Grain Exchange, and the Sioux City Grain Exchange, prior to that time there was a premium paid for that billing?

A. Premium over that which they shipped east?

Q. Yes.

A. Yes.

Q. Do you know if that premium continued after the barge line started operation and took the business away from the farmer in Nebraska and South Dakota?

A. There was a temporary disturbance which resulted, [fol. 1615] as you know, in a reduced rail rate from Nebraska and South Dakota to the Pacific Coast.

Q. Would you say that that reduced rail rate brought back the same volume of business from Nebraska and South Dakota to the Pacific Coast as was formerly in existence?

A. Well, this happened when corn west of the Missouri River was getting scarcer and scarcer on account of the drought. So, when you are talking about volume,——

Q. When did it happen?

A. When did it happen, when the barge line movement displaced Nebraska and South Dakota corn?—As I recall, it was 1935 and 1936.

Q. And in 1935, won't you agree that South Dakota did have a corn crop?

A. No, I won't.

Q. Well, the figures will show that; but nevertheless, was there a premium paid from that time on until the present time on what is known as Group F billing at Missouri River markets?

A. There have been premiums paid in certain instances.

Q. To the Pacific Coast?

A. I can't answer you any more definitely than that; I don't keep all these practices, all these prices in my head.

Q. When that Nebraska and South Dakota farmer lost that Pacific Coast market, did that result in any benefit to him,—bearing in mind his premiums were taken off?

[fol. 1616] A. No benefit to the Nebraska farmer, no.

Q. Nor South Dakota?

A. Nor South Dakota.

Q. Nor any farmer in Group F territory; that is, the Transcontinental Group F territory?—You will agree with me on that?

A. But on the other hand, the farmer in Illinois got a higher price; so did the farmer in Iowa.

Q. But you reduced the farmer's price in Nebraska and South Dakota, to hand it to the farmer in Illinois along the Mississippi River?

A. No.

Q. Well, if he got a premium for it before,——

A. As a matter of fact, if you want to take all the farmers that effect was higher prices to the farmer.

Q. What farmer?

A. The farmer who used the waterway.

Q. But resulted in lower prices to the farmer that did not?

A. No; that is where you did not—the reduction did not offset the increase.

Q. The reduction to the farmer out in South Dakota and Nebraska was pretty substantial?

A. I don't think so.

Q. Do you know how much it was?

A. No; nor you don't, either.

[fol. 1617] Q. If I will tell you that day in and day out there was three and four cents a bushel premiums on Group F billing, based on my knowledge of fourteen years' experience, will you accept that statement?

A. Yes; but I would not accept that conclusion.

Q. I am just asking you to accept my statement that there was three or four cents premium paid on billing to the Pacific Coast?

A. I will accept that.

Q. If that premium was removed, didn't that farmer get three or four cents less for his corn?

A. I would not agree to that.

Q. I think you said something about the Chicago rate group, and you referred to it as a small group;——

A. Let me correct you right there; I didn't say anything about the size of it.

Q. I think you said small group; I wrote it down. Anyway, would you consider a territory that runs to Joliet, Aurora, almost to Lafayette, Indiana, and over to Valparaiso, Indiana, as a small origin group,—and to Milwaukee?

A. No, I would not call that very small.

Q. And therefore, this 34½ cent local rate from Chicago does move a substantial volume of grain from territory other than that immediately adjacent to Chicago?

A. I do not think that follows.

[fol. 1618] Q. You do not think so?

A. No; I haven't any information as to the volume on the 34½ cent rate to the east.

Q. I will put the question this way: If a man located at Tefft, Indiana, had a 34½ cent rate and wants to ship grain to New York, what rate would he pay?

A. The local rate.

Q. 34½ cents; you will take my word?

A. If he ships by rail; but I question whether he does in any substantial volume.

Q. Can you tell me how he will ship any other way than rail, if he is not on the waterway?

A. He can ship somewhere else; you are talking about movement to New York.

Q. Any other place, wouldn't he pay his local rate?

A. If he shipped to New York by rail.

Q. If he shipped any place, would he pay his local rate?

A. He would pay it to that point; he might be moving it by truck to Chicago, for all I know.

Q. If he moved it by truck, under your theory, would he get the reshipping rate?

A. He would ship by lake or sell it locally.

Q. You would take away the privilege of any market east of him buying from him, because he could not compete with [fol. 1619] the rates by water to Chicago; is that it?

A. No.

Q. Now, I would like to ask you something about your exhibit No. 52: Are there at this time any through one factor rates on grain from Morris, Illinois, to points in Central Freight Association territory?

A. Not that I know of.

Q. And in arriving at the rates shown,——

A. There may be to Battle Creek.

Q. I will admit that; but generally speaking, there is no through one-factor rate? What factor up to Chicago did you use in arriving at your through rate?

A. 9½ cents, I believe it is; yes, that is right, 9½ cents per hundred pounds.

Q. Now, will you refer to your exhibit No. 55; what is the purpose of showing the proportional rates on that exhibit? I do not know whether I get you correctly or not.

A. The purpose is for comparative purposes, to show that a proportional rate was subscribed by the Commission substantially lower than local rates in the same territory.

Q. Did you use the proportional rates shown on this page in arriving at what you considered a reasonable rate for the movement of grain in Central Freight Association territory?

A. No.

Q. Is that one of the factors?

[fol. 1620] A. No; I did not use it in computing my reasonable grain rates in the east.

Q. I believe you said that you participated in the Western Grain case?

A. Yes, I was in some angles of it.

Q. And I think you read the order in that case?

A. Oh, yes.

Q. Now, in arriving at proportional rates from the Missouri River east the Commission first set through rates

from Kansas to Chicago, as an example, and broke them back to make a rate break at Kansas City?

A. Yes.

Q. And didn't they——

A. They did that in some instances.

Q. You said yes, which is enough.

A. I want to qualify it a little.

Q. And didn't they use 15 cents as that proportional rate that time?

A. Yes.

Q. And didn't they then apply that same proportional rate from St. Joseph, Omaha and Sioux City to Chicago?

A. Well, they made a blanket rate.

Q. It was not blanket; it was just from those points, and it only applied——

A. Well, you want me to take Kansas City first as the [fol. 1621] key; I don't think it is a key any more than Omaha or Sioux City were key points.

Q. You said you read the report?

A. Yes, I did; and I think I know enough about it so I can answer your question.

Q. Isn't every one of those proportional rates that you refer to in exhibit No. 5 only applicable on grain that has paid a certain minimum rate into that market?

A. A certain minimum?

Q. Yes, sir: by rail.

A. I believe that it has to be a minimum of the 5-mile rate, or something like that.

Q. Would you take my word for it that at the time the rates were published the minimum rate to Sioux City, Iowa, was 8½ cents per 100 pounds?

A. I presume you know what you are talking about; that sounds a little high to me.

Q. That is what it was. We will take 8½ cents for 10 miles into Sioux City, and that was the minimum rate that would apply in connection with the 15 cents proportional rate, or 16 now; and we will add that to the 16 cents, and we will arrive at a through rate of 24½ cents for a distance of 508 miles, instead of 16 cents for 498 miles; and don't you think that is a better comparison of what a local rate should be from Illinois?

[fol. 1622] A. I am not using it to compare with the local rates from Morris; I am using it to compare with the proportional rates from Chicago.

Mr. Brown: Mr. Bradford, you mentioned the rate went from 15 to 16, but failed to mention that the inbound minimum went up from 8½ to 9 cents.

Mr. Bradford: Thank you; I got another half cent.

By Mr. Bradford:

Q. Something was said about Western Trunk Line scale; in the first order in the Western Grain case, did not the Commission prescribe a specific scale?

A. Prescribe it?

Q. Yes.

A. Not as I recall it.

Q. Wasn't there a Western Trunk Line scale in the first order?

A. You mean a scale of rates which the Commission said had to be applied generally in the territory?

Q. I will make the statement; you tell me whether I am wrong: didn't in the first order the Commission in the Western Grain case carry a Western Trunk Line scale; and in the second order they said there really was no need for it, and they left it out?

A. My answer, to the best of my recollection, is no.

Q. What did they prescribe?

A. They prescribed specific rates from what they called representative or key points.

[fol. 1623] Q. They prescribed specific rates to the markets; but I am talking about the movements generally; didn't the first order in the Western Grain case carry a scale?

A. You mean between the country points?

Q. Yes.

A. I think perhaps you are right; my recollection is not very clear.

Q. Can you tell me what relation the key point rates to the market carried in that scale?

A. Lower.

Q. How much lower?

A. I couldn't tell you offhand.

Q. Don't you know that the Commission said themselves 90 to 95 per cent?

A. That is lower, isn't it?

Q. That is lower, but that was the basis of the local rates to the market.

Mr. Root: There is a lot of confusion about that now; that is the first market?

The Witness: Really, Mr. Bradford, I would rather have you tell what the facts are; I cannot depend on my memory.

Exam. Taylor: The reports will speak for themselves, in any event.

Mr. Bradford: I am just trying to find out what he knows, if anything.

[fol. 1624] The Witness: He is talking about an early decision, that was superseded. I don't see that it has any bearing.

By Mr. Bradford:

Q. You used it in your exhibits.

A. I referred to it because I thought Mr. Tannehill was using something that was not a rate scale at all. My opinion is that it had no particular bearing on this case at all.

Q. Now, you admit that 91 per cent applied as a key point.

A. I will take your word for it.

Q. And then a proportional rate applied from that market to the next market?

A. That is correct.

Q. Now, if you want to make a rate to some Central Freight Association point or other, don't you believe that would be a better way to measure it than just to take some scale like you have shown on your exhibit No. 57?

A. I think it would be fair to take the eastern and western factors, both cases, and make a comparison.

Q. Then I want to ask you something about exhibit No. 57: I take the rate that you show on the exhibit,—and I assume these are local rates as well as the proportional that you are suggesting as reasonable rates; take the rate that you show for 500 miles, what is that rate?

A. 13 cents.

Q. Now I will ask you to look at the proportional rate you show in your exhibit 55 from Sioux City, Iowa, to Chi-[fol. 1625] cago, 498 miles; what is that?

A. 16 cents.

Q. So your proposal for a reasonable rate for 500 miles is actually 3 cents less than the prescribed proportional rate from the Missouri River to Chicago; is that it?

A. It shows that is a pretty good rate.

Q. Your answer is yes?

A. The Commission said 16 cents was a reasonable maximum proportional rate from the Missouri River to Chicago. Eastern lines generally have a lower rate, however, than Western lines; therefore 13 versus 16 seemed to be comparable.

Q. And the Commission also had in mind there was prior movement, because they broke the rate back?

A. Prior movement?

Q. And in your case, the rate of 13 cents, there will not be any prior rail movement; is that correct?

A. Yes, there will be prior movement.

Q. What prior movement?

A. We are talking about a prior movement by barge from Illinois to Chicago.

Q. I am talking about your exhibit No. 57, where you set up a scale of rates, that you say or consider is reasonable rates; and I asked you if that was a local rate too, and you said it was for any movement. In answer to Mr. Enoch's question you said you didn't care what kind of [fol. 1626] movement, whether local or any kind, that was reasonable. Now, I am asking you whether you consider that 13 cents for local movement is reasonable in comparison with the 16 cents the Commission prescribed as proportional for the same distance.

A. It would be reasonable, inasmuch as it would pay the eastern railroads as much as they get on all freight.

Mr. Bradford: That is all.

By Mr. Brown:

Q. Mr. Childe, I understand, that the object or purpose of the Mississippi Valley Association is to develop the economic welfare of the communities in the Mississippi Valley; is that right?

A. Yes, sir; not only the communities, but the producers and the consumers.

Q. Well, you can broaden it just as much as you like?

A. Yes, we like to have it stated broadly. We deal with the general welfare, to the best of our ability.

Q. Has the Mississippi Valley Association advocated that the best method or chief method to bring about and develop the economic welfare of the community would be by the ap-

propriation of public moneys to improve and develop the waterways in the Mississippi Valley?

A. Well, we advocate generally the cheapest, most economical form of transportation possible within the Valley, all kinds of transportation. We think there is room for all.

Q. But have you chiefly advocated as a means to that end [fol. 1627] the appropriation by the Federal Government of public moneys for the development of the waterways themselves?

A. That has been a prominent part of our activity.

Q. It has been the most prominent part.

A. I wouldn't want to say that; but I might say perhaps we have spent a lot of time trying to get the waterways in the Mississippi Valley,——

Q. If it is not the most prominent, what has been the most prominent movement followed by your association?

A. We have dealt not only with waterways, but the general conservation of resources of the Mississippi Valley.

Q. By whom?

A. By everybody, the government and the private citizens.

Q. To what extent have private citizens contributed money for that purpose?

A. We get all our money from private citizens.

Q. Yes, that is for the carrying on of your association; but for the development——

A. You mean do we spend association money to develop the resources of the Valley?

Q. Yes.

A. Not directly; we could not go very far with our income.

Q. Well, if you do not do that, what private individuals or industrial concerns have donated money for the development of the waterways or any facility in connection with the [fol. 1628] waterways?

A. Why, speaking generally, some waterways are paid for by federal funds. That comprises most of the money: some by state funds. Some contributions have been made by landowners. All forms of contributions have been made in the Valley. The principal source, of course, is federal money.

Q. Take the landowners; where are they located with respect to the water transportation?

A. Adjacent or near the banks.

Q. They bought real estate they wanted to develop and sell to some one; is that it?

A. Well, they might have farms they wanted to protect; or they wanted to get the benefit of the waterways generally.

Q. Their interest was not any wider than their distance was from the river; isn't that a fact?

A. That is something I cannot answer directly. Everybody who contributes money to a thing generally wants to improve conditions by doing so.

Q. And this fellow who has done that has expected and has got much greater proportion, much greater appropriations from the federal government?

A. Yes; those were usually conditional from the federal government, doing certain work.

Q. Now, Mr. Childe, if the effect of the cancellation of the reshipping rates from Chicago by rail is that barge [fol. 1629] grain to a large extent, if, perhaps not altogether, must move beyond by lake to the east, would not that conform to the general policy of your association, that tansportation by water should be encouraged and permitted and developed?

A. No. Our policy is that all forms of transportation should be encouraged and promoted and developed.

Q. I am asking now if this grain is forced by the cheaper water route out of Chicago by lake, wouldn't that follow your general policy of the development of waterways?

A. I answered that it would not conform to the general policy of the association.

Q. Why, because you are self-centered in the Mississippi Valley?

A. Because we want the people of the Mississippi Valley, when they have the opportunity, to ship by all forms of transportation at the lowest possible reasonable rates.

Q. And by all means of transportation?

A. Yes, positively so. We want the railroads and the trucks and the waterways all of them to be used to the best advantage of the public.

Q. We will start from that point: did you have in mind when you answered some of Mr. Enoch's questions what Mr. McClellan of White, Illinois, said about the competition he had with trucks trucking grain to Chicago as against the movement of grain by barge to Chicago?

A. I did not have that in mind.

[fol. 1630] Q. You knew he said it, didn't you; you knew that statement was made by Mr. McClellan?

A. I don't know whether I recall the statement or not; what are you referring to?

Q. I am referring to the fact Mr. Enoch asked——

A. I know what Mr. Enoch asked me; but I don't know——

Q. If Mr. McClellan made the statement that he came in competition, in the shipment of his grain by barge-river, with Bacon's trucks,—he said Bacon's trucks were getting grain in the same territory for trucking to Chicago; if he said that, would that conform to the general policy of your association, that those two forms of transportation should have the same rate east of Chicago? You said that, didn't you?

A. I didn't say that specifically; but I will say generally that all forms of transportation should have a fair opportunity to haul what they can at reasonable rates.

Q. Now, let us take the rail rates in the Illinois Valley: did you notice in Mr. Allen's exhibit, I think it was 45, where he said the rail corn that comes in by rail to Chicago from the same Illinois Valley territory was discounted from one-half cent to two and one-half cents a bushel; what would you say about developing the railroads, if the grain that comes in by that railroad is discounted to that extent; how would you develop movement by railroads?

A. That merely reflects the rates that are available. The [fol. 1631] way to develop movement by railroad is for the railroads to make the best rate they can, just as any other form of transportation has to develop.

Q. You have seen the rates that the railroads have established or published on corn from about 375 stations, in the Illinois Valley here, the lowest rates they have had for many years, to my knowledge; now, would you say that those rates were just as much entitled to the reshipping rates east of Chicago as the barge rates or the truck rates from the same territory, originating in the same territory?

A. I think any grain that gets into Chicago by rail is entitled to reshipping rates out.

Q. Now, I am not so very particular about this, Mr. Childe; but you certainly went into back history in your exhibit 56: I want to ask you if you took these rates from Western Trunk Line tariff 332-B which you cited? Is that the current issue?

A. This particular exhibit was made by taking the rates prescribed in the Commission's report in the Western Grain case, and increasing that by the Ex Parte general increases.

Q. Which report?

A. Docket 17000, Part 7, and the latest report. You can give me the citation, can't you?

Q. Well, now, Mr. Childe, don't you know that——

A. The one in 1934, wasn't it?

Q. Don't you know that the Commission, after its first [fol. 1632] report was set aside because it was annulled by the Supreme Court, revised a great many of their proportional rates; some of them they canceled; and that the second report is the report that contains the rates that were subsequently published, and of course increased under Ex Parte 123?

A. That is right; and that is what these rates are. I think they are precisely the same as the present published rates, except there are included in here one or two rates which the Commission prescribed but which are not now published as proportional rates, for instance, Peoria-Chicago, as I recall it, is not now published as a proportional rate; but it was prescribed as a proportional rate.

Q. Well, then, your exhibit does not purport to show the present facts?

A. It shows exactly what it purports to show, what the Commission prescribed, plus the subsequently established general increases.

Q. If the Commission in a subsequent report modified it materially, and canceled the rates, for example from Peoria to Chicago, which was 3 cents, and it is now 12 cents, won't you say that was quite a modification?

A. Yes, if that was true.

Q. Isn't it true?

A. No.

Mr. Brown: Then I will ask, Mr. Examiner, that this [fol. 1633] exhibit 56 either be rejected or revised by Mr. Childe to conform to the present tariffs.

Exam. Taylor: Are you willing to do that, Mr. Childe?

The Witness: I just explained that it conforms to the present tariffs with the exception of Peoria-Chicago, which was a proportional rate prescribed but not now in effect. Peoria-St. Louis is another one.

By Mr. Brown:

Q. Take the second one, Minneapolis to Chicago; is the 12½ cent rate to——

A. It is shown here as 13 cents; that is the rate in effect today.

Q. Exhibit 56, the second item; that item right there 12½ cents Minneapolis to Chicago; is that the present rate? I am not particular about it, but it is a bum exhibit, that is all.

A. I don't know whether it is or not; I think it is.

Exam. Taylor: Well, if it is not,——

The Witness: If it is not, I would still want it in here, because that would be the Commission's prescribed rate, plus the general increase.

By Mr. Brown:

Q. Go down to the third block; to St. Louis you show from Minneapolis and Duluth 16 cents a hundred pounds; is that the present rate, and if it is, how long has it been in effect?

A. I don't know.

Mr. Brown: If he wants to use these figures,—I move [fol. 1634] we simply will have to disregard them, because they cannot be found in the tariff.

The Witness: Mr. Brown, I do not think you understand what this exhibit purports to show.

Mr. Brown: Yes, I do; and if the Commission changes its mind and think that a rate should be 19 cents, instead of 16 cents, you would say it had no right to change its mind; and you are going to use that as a basis of advocating rates somewhere else.

The Witness: No, no.

Mr. Brown: That is all.

Mr. Enoch: I understand that these rates on there are taken from the tariffs described. If they are not, there isn't any occasion for putting the tariff there, and the exhibit ought to be ignored.

The Witness: I think if it would help the record any, I could very readily supply within ten days by letter to all parties, a statement that will show just to what extent exhibit 56 varies from the present tariff rates. Generally speaking the tariff rates are the same as those prescribed, plus the Ex Parte increases. There are a few exceptions;

I think Mr. Brown has called attention to all of them. But it could very easily be checked up, if that would be helpful to the record I will do so.

Exam. Taylor: Instead of the method that you suggested [fol. 1635] here, cannot you put in a corrected exhibit for No. 56?

The Witness: What I wanted to show, Mr. Examiner, was what the Commission prescribed plus the increases; and then I can put in a supplemental item which will show wherein the present tariff rates differ from these rates. Would that take care of the situation?

Mr. Brown: As far as exhibit 56 is concerned, I want the present rates in the record, if there are going to be any rates in the record.

The Witness: That would take care of it; the differences would be very minor.

By Mr. Bradford:

Q. What, the difference between 3 and 12 cents is minor?

A. Yes; the exceptions are so few that they do not amount to anything.

Q. If there — any 3-cent rates in the country, are you perfectly willing they should be advanced to 12 cents, if they happen to be water rates? If there — any water rates 3 cents per hundred pounds today, are you perfectly willing they should go up to 12 cents, and call them infinitesimal?

A. There is not now any movement of grain on the 12-cent rate from Peoria to Chicago, that I know of; and there could not be if there was a transit balance available lower than that, as you well know.

Q. Have you put in transit balances here?

[fol. 1635a] A. No. You and I know very well that grain moving from Peoria to Chicago does not pay 12 cents; so why quibble?

Q. You don't know anything about it; and let us take your exhibit 55, since you want to argue a little bit: I want you to give the Commission the correct rates as of today in your exhibit 55, if you find any of them that are wrong; and there are. I want to go to another part of exhibit 55.

Exam. Taylor: We were talking about exhibit 56 before.

Mr. Brown: I want to go to exhibit 55 now: in the first block you show rates from Sheldon to Chicago of 25 cents; the very next figure is Storm Lake, Iowa to St. Louis, 466

miles, a greater distance, rate 24 cents; the next one, Paynesville, Minnesota to Chicago, 484 miles, rate 24.5 cents. The last two the distance is greater than from Sheldon to Chicago, and the rates are lower. On what kind of a scale would those rates be made—you have been talking a lot about scales.

A. They are not made on scale.

Q. Those rates are not?

A. Though they are the rates that the Commission prescribed, as increased to the present basis.

Q. They do not conform to a scale?

A. They do not conform to any strict mileage scale, no.

Q. I thought you were talking about Western Trunk Line scales here a moment ago?

A. Quite the opposite; they are put in here to show that [fol. 1636] the rates from the country points to the markets in the Western Trunk Line territory are lower than what Mr. Tannehill called a scale.

Q. Well, anyhow, these rates here that you have shown here,—and you only got about 6 points, and I have only taken the last three—they do not conform to any scale or any percentage of any scale?

A. As far as I know there isn't a rate in effect from country points to markets in Western Trunk Line territory that conforms to a scale.

Q. A uniform scale?

A. That is right.

Mr. Brown: All right.

Exam. Taylor: Do you wish the corrections made on exhibit 55 and 56 to show the present rates?

Mr. Brown: I don't care much about them myself, but the Commission ought to have; and that is Minneapolis to Chicago, 12½ cents; I am sure it is 13 cents.

The Witness: That may be; I am willing to accept your word for it.

Exam. Taylor: Will you supply the record with the present rates where you find that the exhibits do not show.

The Witness: Yes, I will be glad to, Mr. Examiner.

Exam. Taylor: In 10 days.

The Witness: Is that exhibit 55 and 56 only, Mr. Brown? [fol. 1637] Mr. Brown: The only ones I looked at.

Exam. Taylor: Will you make the corrections, show the tariff references?

The Witness: Well, the tariff references are already shown.

Exam. Taylor: Well, they might not be.

The Witness: If I find any of these rates are wrong, I will show the tariff in the letter.

Exam. Taylor: I do not want a letter; you can send in a letter, but accompany it with a statement.

The Witness: Will the statement be marked 55-A, or something?

Exam. Taylor: No, it will not.

The Witness: Will it have any number?

Exam. Taylor: I can't tell you; it will be numbered if it is received.

The Witness: I see; all right.

Exam. Taylor: Mr. Wheat?

By Mr. Wheat:

Q. Did I understand you, Mr. Childe, to tell Mr. Enoch that you thought it would possibly be all right to establish proportional rates from Chicago on grain which arrived by truck?

A. That is not involved in this case; but I told him I could not see any reason why there should not be.

Q. Do you think those ex-truck proportional rates should [fol. 1638] be limited to Chicago?

A. No; we were discussing general principles.

Q. You will agree then, that if proportional rates were put in from Chicago on ex-truck grain that it would comply with some regulation that you thought might be proper, they ought to be put in from Peoria and Pekin?

A. I wouldn't see any objection to applying them generally, if they went in anywhere. All this is getting so far outside the record here that you understand it amounts to speculation on my part.

Q. I realize that, Mr. Childe; but you made the statement.

A. Well, it was on cross-examination; I try to answer questions.

Q. Would you say then that because considerable corn is trucked in from Dwight to Morris, they ought to have proportional rates from there?

A. I wouldn't want to go any further into truck rates in this case, because I don't think they have any bearing.

Q. Your previous answers to Mr. Enoch's questions, and Mr. *Mr.* Brown's questions, hadn't any bearing?

A. A good many of them on cross-examination had no bearing at all, as far as I could see.

Mr. Wheat: Of course, if you won't answer questions, it is all right with me. That is all.

Mr. Enoch: Mr. Examiner, there have been a lot of state-
[fol. 1638a] ments by Mr. Childe about what the Commission did in 17000, Part 7. I would like to ask Mr. Childe when he made the statement that the rates from country stations to markets were less than the Western Trunk Line scale, you had a situation such as from Kansas to St. Louis in mind?

The Witness: Kansas to Kansas City; Kansas City to St. Louis; Kansas to Omaha; Nebraska to Omaha; and so on.

By Mr. Enoch:

Q. You have Kansas City to St. Louis in mind?

A. Among others.

Q. Have you ever checked the rates to see what on the average their level was as compared with the Western Trunk Line scale to St. Louis?

A. I think so; I made a pretty extensive check.

Q. What was the result of that check?

A. It shows generally that the rates are lower than the scale, so-called.

Q. You say you did make a check?

A. I did not check the rates with any scale, but I checked the rates to determine what the general levels were from the country points of origin to the markets. I plotted them all on a chart, and it was from that chart that I derived my knowledge of the general levels of those gathering rates.

Q. I will ask you if you checked the rates from Kansas to St. Louis, you did not find that they average higher than the Western Trunk Line scale?

[fol. 1639] A. As I told you, I did not compare them with the Western Trunk Line scale, because there wasn't any Western Trunk Lines scale in the Commission's report that I used. I used the report of 1934.

Q. You mean it was torn out?

A. There wasn't any in there; the Commission prescribed specific rates from given country points to the markets,

and I took those specific rates, took the mileages to determine the levels for several distances.

Q. But you are prepared to tell the Commission here that on the average the rates from Kansas to St. Louis are less than the Western Trunk Line scale?

A. I would not want to take Kansas to St. Louis alone, because I do not have those in mind.

Mr. Enoch: All right.

Exam. Taylor: Any further cross-examination of this witness? (No response.)

Mr. Belnap: I have a question.

Exam. Taylor: Redirect.

Redirect examination.

By Mr. Belnap:

Q. Mr. Childe, on cross-examination you stated in substance that a proportional rate is a separately established charge which the carriers hold themselves out as willing to accept for that portion of a through service, which the carriers so publish in proportional form from the proportional [fol. 1640] rate point to final destination; now, with that thought in mind, will you please tell me as to whether or not there is any transportation arising—and by that I mean any condition or circumstances surrounding the physical service performed by the carriers who perform the service, that being the only service which is rendered for the proportional rate, which justifies charging a different rate on grain which arrives at the proportional rate point either by barge line or by lake line than is charged on the same species of grain originating at the same interior origin and reaching the proportional rate point by rail?

A. Are you speaking of the rates out of Chicago?

Q. Out of Chicago?

A. Out of Chicago the proportionals are generally speaking the normal rates for transportation of grain the sense that the Eastern Lines never have gotten any higher rates than that. Therefore I do not see that there is any justification for charging a higher rate on grain that has had prior transportation into Chicago, whether the form of transportation is water or rail. Of course, the physical service performed by the Eastern railroads is precisely the same whether the grain moves into the Chicago elevator by

one form of transportation or another. The outbound rail haul is not affected by the inbound form of transportation.

Q. And if you had the same interior origin say for grain [fol. 1641] which comes in via rail, your service for which a separately established proportional is charged would be a portion of the same through service, as far as origin and destination is concerned; that is true, is it not?

A. They would both be identical in that respect also.

Mr. Cole: I have two questions I would like to ask, if you will permit me.

Exam. Taylor: Proceed.

Recross-examination.

By Mr. Cole:

Q. Mr. Childe, I understood you to say in answer to Mr. Belnap that any service beyond the proportional rate point was the same on grain via the rail line, that the proportional rate should be applied to that grain in the same amount, no matter where the grain came from, or no matter what kind of transportation it used to get into that proportional rate point; is that correct?

A. Referring to transportation out of Chicago.

Mr. Belnap: My question went from the same interior origin in both cases.

Mr. Cole: Mr. Belnap, that would be impossible; you said if the grain arrived via lake, and so the grain could not physically possibly have come from the same interior origin and moved via lake. Now, do you want——

The Witness: I do not follow you there, Mr. Cole. The grain might come from Paynesville, Minnesota, for ex- [fol. 1642] ample, by lake to Chicago,—via lake, or it might come via-all-rail.

By Mr. Cole:

Q. Is it your position, and has your testimony been dependent on this as a premise: that east of Chicago the various rail lines perform the same service on the grain, whether that grain originated and came into that point via water or rail, or truck; and that therefore that proportional rate should be the same out of Chicago?

A. Predicated on the fact that that has been your rate, that it is a compensatory, profitable rate to you. If you increase it you won't move the traffic; therefore I say you should not increase it.

Q. Do you conceive that to be an answer to my question, Mr. Childe?

A. Yes; I do not think you can be theoretical without a practical situation, and get anywhere.

Q. Do you think that grain that moves from Minneapolis to Chicago, no matter how that grain moved from Minneapolis to Chicago, now, and grain that moves from Kansas City to Chicago, both grains moving east of Chicago,—is it your contention that the proportional rate east of Chicago should be identical on those two kinds of grain for the movement east of Chicago?

A. No.

Q. What difference should there be made in the level of proportional rates east of Chicago, as between the grain that gets there from the northwest and the grain that gets [fol. 1643] there from Kansas City?

A. The difference the Commission prescribed.

Q. And why did the Commission prescribe that difference?

A. To try to satisfy competing grain markets, primarily, I think. Of course, I do not want to tell the Commission why it did a thing.

Q. Then east of Chicago, if grain originates in the immediate vicinity of Chicago, just outside of Chicago, and if grain originates in the territory just outside of Minneapolis, and if grain originates in the territory just outside of Kansas City, how many proportional rates would you have east of Chicago, considering that all of that grain now will move over the same line of railroad east of Chicago, for the same distance, the same kind of a car, and same train?

A. I wouldn't have any more than there are now.

Q. Would you have that many?

A. If I had to do it all over again, I don't know; but for the purpose of this case, I am willing to take things as they are.

Q. Now, would you have, in your understanding of the construction of a proportional rate east of Chicago,—would there be a proportional at one level for a movement from a territory within 80 or 90 miles of Chicago, into Chicago,

and a proportional rate at a somewhat lower level for that grain originated in the Northwest territory, for instance?
[fol. 1644] A. You say would I do that?

Q. Would that be your understanding of a proportional rate setup?

A. That is not my understanding of the present one, no.

Q. Is that your understanding of a proportional rate?

A. A theoretically proper one?

Q. Yes.

A. Generally, they do not vary with the distance from the point of origin.

Q. You understand, then, that a proportional rate out of Chicago would not give consideration in its level to the distance that the traffic had moved up to Chicago?

A. That is right.

Q. It would be the same level proportional rate out of Chicago?

A. That has been the practice, to disregard distance inbound.

Mr. Cole: That is all I have; thank you.

Mr. Enoch: I have two questions.

Exam. Taylor: Go ahead.

By Mr. Enoch:

Q. Mr. Childe, are you aware of the fact that there are tens of thousands of cars of grain and grain products moving from the west to the east through these gateways, Chicago, Peoria, and St. Louis?

A. Yes.

Q. And that a large portion of that comes through Chicago?

[fol. 1645] A. Yes.

Q. And that the movement is direct, without stopping?

A. I don't know about that.

Q. Well, if there is a movement direct, the rate paid for the through movement is the combination on Chicago, isn't it?

A. Whatever the through rate is, whether it is the combination or single factor rate.

Q. Well, aren't you a grain rate expert; isn't that a combination on Chicago?

A. Some of them are combinations, and some are not.

Q. How about points west of the Mississippi River?

A. The combination basis is predominant, I would say.

Q. And the factor east of Chicago is the same proportional rate you have been talking about this afternoon?

A. The factor east of Chicago in that case would be what is called the reshipping rate, somewhat lower than this northwest proportional that Mr. Cole talked about.

Q. Would there be any difference in the level of that rate on a through movement and a level of the rate that applies when grain stops at Chicago, is transited, and moves out six months later?

A. Well, there isn't any difference; I do not care to go into the theoretical question involved; whether they should be or not, I don't know.

Mr. Enoch: That is all.

[fol. 1646] Exam. Taylor: The exhibits are received, subject to the objections made.

The Witness: May I ask the reporter to correct the numbers; Mr. Cole said I said 51 to 58; it should be 50 to 58.

(Protestants' exhibits 50 to 58, Witness Childe, received in evidence.)

Exam. Taylor: The hearing tomorrow morning will probably be in Room C and D, on the first floor. The hearing will run from 9:00 o'clock until 12:30. We will now adjourn until 9:00 o'clock tomorrow morning.

(At 4:40 o'clock p. m., an adjournment was taken to 9:00 o'clock a. m., tomorrow morning, Saturday, January 20, 1940.)

[fol. 1647]

Morrison Hotel,
Chicago, Illinois,
Saturday, January 20, 1940.

Before R. G. Taylor, Examiner

Hearing resumed at 9:00 o'clock a. m.
Appearances: As heretofore noted.

Proceedings

Exam. Taylor: Let's come to order.

W. T. TANNEHILL, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Cole:

Q. Mr. Tannehill, you have been previously sworn in this case, have you not?
A. Yes, sir.
Q. And you are the same Mr. Tannehill who testified at a previous sitting of this particular issue, are you not?
A. Yes, sir.

Mr. Cole: Mark these for identification, please.
(Exhibits 59, 60 and 61, Witness Tannehill, marked for identification.)

By Mr. Cole:

Q. There have been three exhibits distributed, Exhibits 59, 60 and 61. Will you shortly explain just what those are and what they purport to show?
[fol. 1648] A. Exhibit No. 59 is a statement of the production of corn in Illinois and Indiana counties for the year 1938, as taken from the Illinois Cooperative Crop Reporting Service and shows the counties in Illinois in which are located various grain shipping points that have been mentioned in this proceedings as being affected by the river movements; some of the points are on the river and some, of course, are beyond. It also shows the production of corn in the northeastern Indiana counties as shown on the map.

By Mr. Belnap:

Q. Northwest Indiana, please?

A. Northwest; thank you, sir. Some have already been affected by the low intrastate rates and others will be affected— would have higher rates than would be applicable from the river points by the application of the proportional rate from Chicago.

Exhibit No. 61 is a list of points in Illinois in the counties shown in Exhibit 59 that have been mentioned here, and it shows the distances to New York and Buffalo by rail, direct short line, and via rail through Chicago. The first block shows the through charge made up by using the river charge of 4⅛ cents, which was shown in previous exhibits to Chicago, plus the reshipping rate beyond; and the succeeding blocks show the rates to New York, domestic and export, and the rate to Buffalo from the other points.

On Page 2, we call your attention to numerous—to a [fol. 1649] number of Indiana points through which this traffic to the East would move and the rates from those points, which it will be noted that the domestic rate to New York from these Indiana points, either 34 or 34½ as against a charge of 30⅛ cents from the river points of La Salle, Morris, Ottawa and Seneca.

I think that is all I have.

By Exam. Taylor:

Q. Just for information, the rate in the last column from Buffalo, is that the barge-rail rate?

A. The 25⅝?

Q. Yes.

A. Yes, barge-rail charge.

By Mr. Cole:

Q. Mr. Tannehill, all of those barge-rail rates are charges, are they computed by including in those figures shown four and an eighth cent as being the water charge, that four and an eighth cent appearing on your Exhibit No. 5 that you put in at the previous hearing?

A. Yes, sir.

Mr. Cole: I would like to offer at this time Exhibits 59, 60 and 61.

Exam. Taylor: They will be received.

(Exhibits 59, 60 and 61, Witness Tannehill, received in evidence.)

By Mr. Cole:

Q. Mr. Tannehill, during the course of this proceeding, there have been references made to Mechling Barge Service, [fol. 1650] the L. I. Hay Company——

Mr. Brown: John I.

By Mr. Cole:

Q. John I. Hay and the Allied Barge Company.

Mr. Brown: Corporation.

By Mr. Cole:

Q. Allied Barge Corporation and the Dewey Grain Company, connected with the Lawrence Transportation Company. Those are the companies that are referred to as operating up the Illinois Waterway with grain. Have there been any present or past arrangements with any of those transportation companies operating on the Illinois Waterway, under which arrangements there were any understandings as to transportation beyond Chicago on any of that traffic other than the arrangements that were set out in the tariff extracts that you have introduced at the previous hearing?

A. You mean any agreements or understandings with the barge lines, or whether you mentioned them all—any of those barge lines?

Q. Yes, have there been any?

A. No, sir, there have not.

Q. Is this proposed change in the tariff construction made for the purpose of eliminating grain from the application of the proportional rates east of Chicago that moves into Chicago via those barge and water lines up the Illinois Waterway?

A. Yes, sir.

Mr. Cole: That is all I have on direct.

[fol. 1651] Exam. Taylor: Any questions by respondents? Counsel for respondents?

By Mr. Enoch:

Q. I understand that Mr. Tannehill's answer would apply, namely, that there have been no arrangements of any kind, not only with the barge companies named by Mr. Cole but any barge company bringing grain into Chicago, is that right?

A. That is correct.

By Mr. Belnap:

Q. That would include the Federal Barge Line, would it not, Mr. Tannehill?

A. It would, so far as any rates that are not on file with the Interstate Commerce Commission.

Q. Doesn't it also include the Federal Barge Line, in so far as rates which are on file with the Interstate Commerce Commission?

A. So far as I know, it does. Now——

Q. That is right.

A. Now, I am quite certain that we have never had any conferences with respect to any rates via Chicago. There are no through rates via the Federal Barge to Chicago.

Q. You have no arrangement, you haven't met and talked about that?

A. No, sir, not about Chicago.

Exam. Taylor: Mr. Brown.

Mr. Belnap: I have some more.

Exam. Taylor: This is direct examination. Mr. Bradford?

[fol. 1652] Mr. Bradford: No, sir, nothing.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Is there a like lack of arrangements as to the lake lines which bring grain into the Lake Erie ports from whence you publish beyond rates for application on ex-lake grain?

A. There are no agreements or understandings with any of the lake lines, cargo carriers, in so far as rate application is concerned. Now, that doesn't apply to rates, you understand, with the MAT line.

Q. I understand.

A. The GLT.

Q. I am speaking about the situation where you have a separately established factor applicable from the port, and applicable on grain which has had a prior transportation by water. You understand that?

A. I understand that.

Q. And that is the situation to which your answer applies?

A. Yes, sir.

Q. Mr. Tannehill, take your lake cargo coal adjustment, where you publish from the coal fields to the lake ports rates lower than the local rates to the ports, conditioned on a move beyond by a lake vessel. Is there, in that situation, a similar lack of arrangements covering the through transportation?

[fol. 1653] A. I really can't answer that, because I have never had very much to do with coal rates.

Q. Don't you know that the movement on the lake is under rates not on file with the Commission?

A. I do, but I wouldn't want to say yes or no direct to your question, because I am not familiar enough with coal rates.

Q. What is the purpose of your Exhibit 61, Mr. Tannehill?

A. The purpose of that is to show that many of the points in that exhibit are away from the river, and it shows that the all-rail rate from those points, such as Beaverville that was mentioned by one of the witnesses, he having a farm at Beaverville, Illinois, located probably 75 miles south and a little bit east of Chicago on the Big Four Railroad, and this grain coming in from La Salle, Morris, Attowa, Seneca, via the river; and the continued application of the reshipping rates to eastern destinations, the Big Four Railroad handling the grain out of Chicago, would handle it out of Chicago through Beaverville at a rate a little in excess of 4 cents a hundred less through from La Salle, Morris, Attowa and Seneca than they would charge that man from Beaverville. Now, that is the sum and substance of the exhibit all the way through.

Q. Returning for the moment to this matter of arrangements. You presented an exhibit which showed excerpts of your rate tariffs, reciting the conditions under which various proportional reshipping rates applied. Do you not [fol. 1654] also have in effect a transit tariff, a separate

tariff which governs the matter to some extent, as far as the application of the rate is concerned?

A. Yes, we have a transit tariff that is applicable at Chicago.

Q. And doesn't that transit tariff come into play in connection with the application of proportional and reshipping rates?

A. Yes, sir.

Q. Carries provisions relating to the billing and the manner in which it should be cancelled and the records to be kept?

A. Yes, sir.

Exam. Taylor: Might I interrupt there?

Mr. Belnap: Sure.

By Exam. Taylor:

Q. Can you state, Mr. Tannehill, whether there is a similar transit tariff covering shipments that Mr. Belnap referred to that moved via lake down to the Lake Erie ports?

A. No. Those are carried in the rate tariff, Mr. Examiner.

Q. What do you mean, "those are carried"?

A. The rates are carried——

Q. The rates, but there is no transit.

A. No transit. With the exception of the application of transit tariff at Buffalo to perhaps land-locked mills on a competitive basis with those that reach the water, which, by the use of the transit tariff, provides for the absorption of the switching; but otherwise the Lake Erie ports, the rates are published ex-lake.

[fol. 1655] By Mr. Belnap:

Q. That is, the provisions, as to the application of rates are contained in the rate tariff?

A. Yes, sir.

Q. The same thing is true as to the proportional rates out of Chicago, both ex-lake, ex-rail and ex-river at the present time, isn't it?

A. Yes, sir.

Mr. Cole: I would like to ask Mr. Belnap, when he is addressing inquiries to Mr. Tannehill about the Chicago

situation, you are referring to provisions of tariffs already in evidence here?

Mr. Belnap: Part of them are already in evidence.

Mr. Cole: I object to any further inquiry about tariffs, which is sort of a roving inquiry, unless the tariffs are identified. I want to know what provisions——

Mr. Belnap: I think it would be well to have him identify the tariff. As far as I am concerned, we can have it made a matter of record by stipulation.

Mr. Cole: No, I think we ought to be talking about——

Exam. Taylor: A specific tariff.

Mr. Cole: Identify the tariff, if Mr. Tannehill is talking about provisions thereof, which purport to have some bearing on this case.

By Exam. Taylor:

Q. Can you give us the ICC number of that tariff; the tariffs here at Chicago and the one at Buffalo to which you [fol. 1656] referred?

A. I can supply them but I can't give you the——

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: ICC 3204 is the transit tariff at Chicago, Afent B. T. Jones, ICC 3204; became effective January 15, 1939. Contains rules governing transit privileges on various commodities, including grain, transit grain, milling and malting and track grain.

By Exam. Taylor:

Q. And that would be the tariff that would be applicable in connection with rain originating on the Illinois River at points such as La Salle, Morris, Ottawa and Seneca, M[illegible]ing to Chicago, and which has in the past been given t[illegible] benefit of the proportional rates east?

A. Yes, sir, where it goes into an elevator.

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: Agent B. T. Jones' ICC 3356 is applicable on ex-lake grain from Lake Erie ports, Fairport Harbor,

Painesville, Cleveland, Toledo, et cetera, to trunk line and New England territory.

By Exam. Taylor:

Q. But that is the one that refers to——

A. That is not the one at Buffalo which is published by Eastern lines.

Mr. Brown: Curlett.

[fol. 1657] The Witness: By Agent Curlett; and I will furnish the ICC number of that.

Now, I want to further state——

Exam. Taylor: That will be ten days to do that.

The Witness: I will try to do it this morning.

By Exam. Taylor:

Q. You will try to do it this morning?

A. Yes, sir. I want to state further, in answer to Mr. Belnap's inquiry that the statements I made with regard to the application of ex-lake rates on grain from Lake Erie ports is only applicable to Trunk Line and New England territory. There are no ex-lake rates on grain from the CFA Lake Erie ports to Central territory.

Exam. Taylor: Off the record.

(Discussion outside the record.)

By Mr. Belnap:

Q. Do you want to correct that last statement, Mr. Tannehill?

A. Yes, I will correct that last statement, that there are a few rates that are published as ex-lake rates, I think, out of Toledo westbound.

Q. Cleveland?

A. I seriously doubt Cleveland.

Q. Now, at Buffalo and your Lake Erie ports, regardless of where you do have the ex-lake rates, how is the application policed?

A. I cannot tell you at Buffalo how it is policed.

Q. I understand there is no tariff provision containing [fol. 1658] policing requirements, was that your testimony when you said there is no transit tariff?

A. There is no transit tariff involved.

Q. Well, as far as this Jones' Tariff ICC 3204, isn't this the fact, that it carries the provisions under which you operate transit privileges in connection with single-factor joint through rates and also contains provisions regarding the policing of the application of reshipping and proportional rates?

A. You are talking now to Chicago?

Q. I am talking of Jones' ICC 3204 at Chicago. Is what I said correct?

A. What you said is correct, yet——

Q. Let's forget for a moment the transit under joint through rates, and talk about policing requirements to the application of proportional or reshipping rates.

A. There is no reason why, under the existing tariff—I am confident I am right—that if there were facilities for the interchange between the barge and the rails, for direct loading from barge to car, that that tariff need apply at all under the rate tariff, if the barge line furnished the necessary documents to show that it originated on the barge. That is, the same document that they turned over to the rail carriers, their bill of lading, the reshipping rate today would apply just the same as going through transit house.

By Exam. Taylor:

Q. In other words, they wouldn't have to register the [fol. 1659] billing?

A. They would register that billing at the transit house; it goes into transit and the through movement is stopped.

Q. You mean it goes through the elevator?

A. Yes.

Q. That is the present method of handling?

A. Yes.

Q. Now, I am talking about what you refer as to reloading from the barge direct to the car, if that could be done.

A. That could be done.

Q. There would be no transit house to register the billing with?

A. That is right, but the same document could be furnished the rail carriers, and under the rate tariff, it would apply.

By Mr. Belnap:

Q. In other words, if I understand what you are trying to say, that the proportional rate would apply on a continuous through movement or on a movement temporarily interrupted at Chicago?

A. That is right.

Q. That is the sum of what you are just saying, is it not?

A. Yes, sir.

Q. Provided you comply with the policing requirements as to the handling of the inbound billing?

A. That is contained in the tariff.

Mr. Enoch: I don't understand that, Mr. Belnap.

Mr. Belnap: I understand it.

[fol. 1660] By Mr. Belnap:

Q. Are there policing requirements in the rate tariff or are there in Jones' ICC 3204?

Exam. Taylor: Wait a minute, you object?

Mr. Enoch: I object to that because we are getting some testimony about what is in a tariff that is already in evidence here, and I don't believe that is a proper subject of inquiry. The tariff will show for itself what is in there.

Exam. Taylor: I can't agree with you, Mr. Enoch. He is explaining something that is in issue here and is very difficult to understand. I would like to have it in.

Mr. Enoch: I haven't the slightest objection if Mr. Tannehill and Mr. Belnap understand one another. That is the only thing.

Exam. Taylor: In other words, you want to know if Mr. Tannehill adequately understands the question that Mr. Belnap is raising?

Mr. Enoch: Yes, that is right.

The Witness: Yes, sir.

By Exam. Taylor:

Q. Your answer is yes?

A. I understand his question.

Mr. Belnap: I think I have an unanswered question.

The Witness: I think you have, too.

Exam. Taylor: It was objected to because he didn't understand whether Mr. Tannehill understood it or not. Now, will you read Mr. Belnap's question, Miss Reporter?

[fol. 1661] (Question read.)

The Witness: They are in the rate tariff.

By Mr. Belnap:

Q. Sir?

A. They are in the rate tariff. There are requirements in the rate tariff.

Q. Are all the policing requirements incident to the proportional and reshipping rates in the rate tariff or are some of them in Jones' ICC 3204?

A. Well, it is owing to what policing requirements you are talking about. The requirements as to the application of a rate are in the rate tariff.

Q. That is right.

A. The policing requirements, that tariff there is practically all policing requirements of one form or another.

By Exam. Taylor:

Q. That tariff you are referring to——

A. Is ICC 3204.

By Mr. Belnap:

Q. Now, do I understand you to say that at Buffalo, the Lake Erie ports you have nothing, no policing requirements in any tariff?

A. They are in the rate tariffs. I said it was not necessary for a transit tariff.

Q. I am just talking about policing requirements in connection with the application of separately established factors.

A. They are——

Q. And that is the only thing I am inquiring about, as [fol. 1662] far as what you call a transit tariff is concerned.

A. The application of any rate and the application of these rates is carried in the rate tariffs.

Q. I understand about the application. It tells you when they will apply. Now, I am talking about the rules and regulations which the carriers maintain so that they can

assure themselves of the fact that the rate is correctly applied. I term those policing requirements. You do, too, do you not, Mr. Tannehill?

A. You are getting beyond transit. Now, so far as transit is concerned——

Q. I am not trying to confuse it with transit; I am trying to keep it separate and distinct.

A. No, you are trying to confuse me also.

Q. I beg your pardon, sir. I don't want to.

A. I maintain this, that any tariff that names a rate names the application of that rate, and shows when it is applicable or how it is applicable. And in order to get that rate, they must furnish the necessary data that will bear out their contention that that rate is applicable. Now, that isn't of necessity—it isn't necessary to publish a whole string of rules to show on an uninterrupted movement, for example, what or how we will go about getting that, but the rate tariff itself specifies how that rate applies.

Q. Now, you are talking about an uninterrupted through movement, is that correct, Mr. Tannehill?

[fol. 1663] A. Yes.

Q. Now, let's take the interrupted through movement, where the grain moves into an elevator.

Mr. Cole: Where?

Mr. Belnap: At the point from which it is received.

The Witness: Into the elevator from a boat.

By Mr. Belnap:

Q. From a boat, for example.

A. Very well.

Q. In that situation, both at Chicago and your Lake Erie ports, you have provisions in your rate tariffs, do you not, which describe the conditions and the circumstances under which the reshipping or proportional rate will apply?

A. Yes, sir.

Q. Chicago and the Lake Erie ports are identical in respect to that, is that true?

A. Well, in principle. I can't tell you whether the recording is the same form.

Q. No, no, but in the fact that the rate application is in the rate tariff?

A. Yes.

Q. Now, many times to you have at either point some additional rules dealing with this interrupted movement which relates to the policing of the application of the rates?

A. None published, no.

Q. At either point?

[fol. 1664] A. At the Lake Erie ports, no.

Q. What about at Chicago?

A. Nothing other than that.

Q. Well, is there something——

A. Other than ICC 3204.

Q. There are some rules at Chicago which you don't have at the Lake Erie Ports?

A. No, I don't know of any.

Exam. Taylor: You mean in the rate tariff now, do you?

Mr. Belnap: No, I am talking about rules which police the transit, or rather police the application of the separately established proportional rates.

Exam. Taylor: As I see it——

The Witness: Nothing other than the rate tariff.

By Mr. Belnap:

Q. That is true both at Chicago and Buffalo?

A. That is right.

Mr. Cole: Wait a minute, that definitely is not right.

Exam. Taylor: That is not in accordance with what has been previously stated.

Mr. Belnap: I think it is different, too.

Exam. Taylor: As to the rate tariff it is true, but where it moves through a transit house at Chicago, it seems that this Tariff 3204 would apply and the policing rules in 3204 would apply to transited shipments moving through Chicago.

The Witness: To transited shipments, yes, sir.

[fol. 1665] By Mr. Belnap:

Q. When you say transit shipments, are you talking about a shipment which seeks the benefit of a single-factor joint through rate from an interior origin to a final destination?

A. It wouldn't necessarily have to be a single factor.

Q. Well, is there a difference in your mind between the application of a rate less than—a proportional less than a

local from a Lake Erie port and the application of a rate less than the proportional from Chicago?

Mr. Cole: And there you have got it wrong. You said the last there, less than the proportional.

Mr. Belnap: All right, a proportional less than the local. May I restate it, please:

By Mr. Belnap:

Q. Mr. Tannehill, from the standpoint of tariff publication, the manner in which you go about making the rate applicable, is there a difference between the situation on Lake Erie ports, where on ex-water business you provide a separately established factor less than the local rate from the port and the situation at Chicago where you provide a separately established factor less than the local from the port?

A. No.

Mr. Belnap: That suits me. I still am a little dark about it.

Exam. Taylor: Is that all you have.

Mr. Belnap: That is all I have.

[fol. 1666] Exam. Taylor: Any other cross-examination of this witness? (No response.)

By Exam. Taylor:

Q. Now, Mr. Tannehill, in handling shipments from the lake, first at Chicago and second at the Lake Erie ports, not including Buffalo, what kind of a record do you keep so that you know that the proportional rate would be applicable on the shipment to a destination in Trunk Line or New England territory?

A. That is handled through the Inspection Bureau.

Q. Then you do record the——

A. Oh, yes.

Q. —lake traffic and police it to that extent?

A. Yes, sir.

Q. At the Lake Erie ports?

A. Yes, sir. I can give you the ICC number of the tariff now from Buffalo.

Q. Yes, give that.

A. Agent Curlett's ICC A-563.

Mr. Belnap: Mr. Examiner, you excepted from your question Buffalo, the question you just asked. I was wondering if you would include Buffalo, too, in a separate question so as to make the answer comprehensive.

The Witness: That same thing is true at Buffalo.

By Exam. Taylor:

Q. How do you go about recording the lake transit, the lake inbound movement?

[fol. 1667] A. The Inspection Bureau have a record of that just the same as they have a record of all the grain that comes in which is furnished by the elevator house.

Q. What shows that, that it is registered?

A. They will register the boat manifests similar to what was put in by Mr. Belnap with the Inspection Bureau, or——

Q. They wouldn't have the bill of lading; take the place of the bill of lading.

A. Yes, the boat manifest. You remember—I forget the exhibit number.

Q. That is interchangeable, so far as manifests for boats are concerned?

A. I assume, I don't know, but you will recall that Mr. Belnap put in a yellow boat manifest at the first hearing.

Q. Yes, it is in the docket.

A. That is right.

Mr. Belnap: May I ask one more question, Mr. Examiner?

Exam. Taylor: Just let me follow that up.

By Exam. Taylor:

Q. Is there any other form of evidence submitted on that?

A. Well, no, not that I know of, other than, of course, all of the grain in the house is checked and it must balance. There may be grain coming into that house all-rail and those are kept in the accounts.

By Mr. Cole:

Q. Or by truck?

[fol. 1668] A. Or by truck. Every bit of grain that goes into that house is checked currently by the Inspection Bureau so that if a million pounds of grain comes in by water, that is added to the inbound water when it is registered.

By Mr. Belnap:

Q. I would understand, then, that the elevators at Buffalo and at Toledo and at the Georgian Bay ports are transit houses in the same sense as you referred to the elevators in Chicago as transit houses.

A. The Buffalo and Lake Erie ports. Don't ask me about Georgian Bay ports: that is Canada. I don't know a thing about it.

Q. But as to Toledo and Buffalo, the elevators at those ports may be referred to as transit houses just as you have used that term in referring to elevators in Chicago, is that correct?

A. Yes, sir, that is correct.

Exam. Taylor: Any other questions?

Mr. Cole: I would like to have something on redirect.

Exam. Taylor: Redirect.

Redirect examination.

By Mr. Cole:

Q. Mr. Tannehill, in connection with this handling of grain through Chicago, no matter how it gets in or how it goes out, if it goes out on the rail rates, are there certain rules and requirements published in tariffs on file with the Interstate Commerce Commission, extracts of which you have introduced in evidence in this case?

[fol. 1669] A. Yes.

Q. Do those tariffs which do provide the rules and regulations and show the requirements for the grain to move out under a certain rate application, do those tariffs show all of the rules and regulations that it is necessary to meet with for that grain to get the application of such level of proportional rates, all rates?

A. Yes.

Q. Then these other provisions that we have referred to here, when we have referred to a transit tariff, is there anything in any of those transit tariffs that modify in any way, or that detract in any way from any of the definite rules that there are in the rate tariffs?

A. No.

Mr. Cole: That is all I have. Thank you.

Exam. Taylor: Does that bring up any further questions?

(No response.)

By Exam. Taylor:

Q. Now, Mr. Tannehill, if you will look at your Exhibit 59, did you wish to know the exhibit left blank there in the heading?

A. I will have to get that. I am sorry.

Mr. Belnap: That is Exhibit 60.

The Witness: Oh, wait a minute. That is right, that is No. 60.

By Exam. Taylor:

Q. Now, on Exhibit 61, in reply to questions by myself, [fol. 1670] you stated that the 25⅝ cent rate from La Salle, Morris, Ottawa and Seneca, to Buffalo, New York, included 4⅛ cents for the water movement up to Chicago; but below that, there is nothing to show that the rate of 28½ cents, for example, from Beaverville to Buffalo did not also include it. I want to know whether you do or not; from there on down.

A. No, Beaverville is not on the river.

Q. Then the line "all-rail" should have been extended clear across the page?

A. That is correct.

Q. Now, Mr. Tannehill, I don't know whether you were here yesterday when I asked and one of the barge lines consented to furnish some further information with respect to exhibits which had previously been introduced by you and Mr. Belnap in this case, covering individual shipments. In other words, we want the record complete as to the inbound and outbound billing. Now, that is to be furnished by one of the barge lines for Exhibits 29, 32, 34 and 35.

Now, I would like to know if you could furnish or have the Inspection Bureau—I think this information is readily available at the Inspection Bureau—the transit shipping directions on those four shipments, and I can give you the transit bureau number and the outbound bill of lading or copy of the outbound bill of lading and the outbound freight bills on those four and one additional.

[fol. 1671] A. You want the outbound waybill that carried the car?

Q. Yes.

A. Off the record.

Exam. Taylor: All right.

(Discussion outside the record.)

Exam. Taylor: I want it for these transit numbers: 379106, 391584, 392790, 392626 and 319812.

The Witness: Were any of those exhibits 29 to——

Exam. Taylor: They are right here. Off the record.

(Discussion outside the record.)

Exam. Taylor: Add the 255116 for the benefit of Mr. Belnap.

The Witness: That is the only one you want a copy of.

Exam. Taylor: Let's get back on the record.

By Exam. Taylor:

Q. Now, Mr. Tannehill, I believe, I don't know whether you were present when a witness was referring to lake shipments, and the question was asked on lake shipments into Chicago, from Superior or Duluth, was there any rail movement beyond; and as I recall, the witness replied that there wasn't any grain grown at Superior and Duluth, so it must have had a rail movement beyond. Did you hear that testimony?

A. I think I did, yes. I heard someone say it, I don't know what witness.

Q. In connection with the questions that were asked here this morning, I would like to ask you, do you recognize any [fol. 1672] difference in transportation conditions as of such shipments, rail-lake-rail through Chicago and proportional beyond to the East and the barge movements from La Salle, Morris, Ottawa and Seneca, or any other point on the Illinois Canal?

A. Yes, sir.

Q. Illinois River to Chicago and beyond?

A. Yes, sir, we do.

Q. Do you recognize any difference in transportation in those two sources of movements?

A. Well, now, recognizing difference in transportation conditions, so far as our rails, after we get it, there probably isn't a different transportation condition. But we recognize a different reason for the continuation of the application of these proportional or reshipping rates to this lake billing coming in from Duluth, Fort William, Port Arthur, Superior, for the reason that, first, as the gentleman said, there is no grain grown at Duluth. So that while

the tariff does not provide it, it would have an inbound rail haul. And further, in the continuation of the application of the proportional or reshipping rates to this lake traffic, we are not depriving ourselves of a greater rail haul nor are we depriving our connections west of us of a rail haul because that grain, when it gets to Duluth, will either stay until it can go down the lakes to Lake Erie ports or some port east, or it may move to Chicago and go into storage here and then move out by rail. It gives us that opportunity [fol. 1673] to get traffic from Chicago over our rails, which we would—probably wouldn't otherwise get. Now, when you get down to the barge line——

By Mr. Belnap:

Q. That is east of Chicago, you are talking about?

A. I am talking about east of Chicago.

Q. Yes.

A. When you get down to the barge line, our carriers, such as the New York Central and the T P & W, Pennsylvania, B & O serve Illinois, and here is a barge line that is coming right over into the territory on its lines and taking business away from those rail lines' origins at those stations, taking it over at the river, bringing it to Chicago and then we will take it from there and cut our own throats by less haul on the traffic than we would get if it moved in its normal way from the country station.

By Exam. Taylor:

Q. Speaking of "normal" as to lake movement, would the normal movement be to Chicago from Duluth and Superior?

A. No, sir, I do not think it would.

Q. It has been already stated in the record, the only time grain would move to Chicago would be in case of shortage in this territory around Chicago.

A. I would like to have a grain man say when this grain would move via Chicago from Duluth.

Q. I brought that up because you said "normal."

[fol. 1674] A. Because you will recall that on Exhibit No. 28, Mr. Belnap had to go back to, I think, 1938 to find a cargo manifest of grain coming into Chicago by lake from Duluth.

Q. Well, does an ex-lake shipment pay more freight into Chicago than ex-barge grain?

A. We must assume it does, Mr. Examiner, for the same reason that several of the gentlemen made statements that, well, we know there is no grain grown at Duluth or at Superior. That grain is quite likely to originate west of Minneapolis or at least in the Minneapolis territory; be more likely to originate west of Minneapolis, we will say in the Dakotas.

Q. Then the total charge would be in excess of the combination of locals through Chicago?

Mr. Belnap: May I hear the Examiner's question?

Exam. Taylor: Read my question, Miss Reporter.

(Question read.)

Mr. Cole: I don't understand you, Mr. Examiner. I don't get that question.

By Exam. Taylor:

Q. What we are trying to get at more than anything else is, would there be any Fourth Section violation?

A. Would there be any Fourth Section violations on grain, we will say, originating in the Dakotas moving up to Duluth at a local rate and from then water to Chicago and then on a proportional rate east?

Mr. Cole: May I have it identified a little more what kind [fol. 1675] of a Fourth Section violation, Mr. Examiner, you are inquiring about?

Exam. Taylor: Any kind.

Mr. Cole: There are two general types, however. One is the aggregate intermediate clause and the other is the long-haul clause and short-haul clause. I don't see how there could be a Fourth Section violation.

The Witness: All of the factors are not published and on file with the Commission. There is a portion of that haul that goes out of the control of the railrads.

By Exam. Taylor:

Q. Now, let's get back to your proposition that you referred to first, as a justifying reason for requiring the transit on ex-lake shipments, because you assumed that there must have been a rail haul up to Duluth or Superior. In other words, adjust the through rate because of some reasons not very clear right here right now, somewhat in

the same fashion that the Commission established or prescribed different proportional rates out of Chicago, out of Minneapolis, St. Paul, than they did out of Kansas City or Omaha. In other words, they would shrink the proportional rate through Minneapolis and St. Paul where it was necessary, or bring the Kansas City, St. Louis, Omaha rate up so that they would level out in the total through charge.

A. No, we have never gone into this——

Mr. Cole: Pardon me. Mr. Tannehill, I don't think you [fol. 1676] understood the Examiner's question. I would like the reporter to read his question to you again.

(Whereupon the record was read as follows: "Now, let's get back to your proposition that you referred to first, as a justifying reason for requiring the transit on ex-lake shipments, because you assumed that there must have been a rail haul up to Duluth or Superior. In other words, adjust the through rate because of some reasons not very clear right here now, somewhat in the same fashion that the Commission established or prescribed different proportional rates out of Chicago——")

Exam. Taylor: No, to Chicago.

(Remainder of question read.)

The Witness: Well, as it is corrected, it is quite different than it was first put up, Mr. Examiner, because you said "from Chicago" the first time. Now you say to Chicago.

By Mr. Cole:

Q. Do you understand the question, Mr. Tannehill?

A. I am afraid that is a question I would have to write out on paper and look it over.

Mr. Cole: Mr. Examiner, may I ask a question there?

Exam. Taylor: Certainly.

Mr. Cole: With the attempt to probably clear something up?

Exam. Taylor: Certainly.

Mr. Belnap: Ask him a question; don't state something. [fol. 1677] Mr. Cole: I am not going to state a thing. Mr. Examiner, do you refer to the different influences that were back of the construction of the proportional rates by the

Commission when they made those proportional rates from Minneapolis to Chicago.

Exam. Taylor: That is exactly what I mean.

Mr. Cole: And then made the proportional rates from Kansas City to Chicago?

Exam. Taylor: That is absolutely what I am talking about.

Mr. Cole: I thought so. And with that query, perhaps Mr. Tannehill could——

The Witness: Well, Mr. Examiner, I am speaking, of course, for the roads east of Chicago, Peoria and St. Louis, and I am not entirely familiar with just why they did what they did; Kansas City to Chicago versus Minneapolis to Chicago. But I am quite certain that we didn't establish this ex-lake from the ports for the same reasons that they put 13 cents from Minneapolis to Chicago and 16 or 17 cents from Kansas City to Chicago. We think we got an awful bad trimming in that 15037 case, where we had to take the shrink. Because Minneapolis was three cents less than Chicago, we had to give Kansas City rates three cents less on our Eastern proportion of that, so we didn't make any rates for that reason.

Exam. Taylor: Any further questions?

Mr. Brown: Mr. Examiner, somebody brought up the question of including in this investigation as to what hap- [fol. 1678] pened to the inbound grain after it got here. I would like to test the witness a little bit on the question of ex-lake grains as fixed by the Commission.

By Mr. Brown:

Q. Mr. Tannehill, do you remember that the Toledo Produce Exchange, as early as 1912 or 1913, filed a complaint with the Interstate Commerce Commission asking for a certain adjustment of rates, ex-lake, complaining that Buffalo was preferred?

A. I don't know the date. There was a complaint filed and a decision rendered. As I recall it, they gave Toledo 78/60 of *of* the Buffalo rate.

Mr. Brown: For the record, I would like to read——

Mr. Belnap: The citation?

Mr. Brown: 27 ICC 536; 30 ICC 498; 50 ICC 515.

By Mr. Brown:

Q. Mr. Tannehill, do you remember later that the city of Oswego, which had erected an elevator on the water, also complained to the Commission about the adjustment of rates being preferential to Buffalo and the Commission fixed a relationship as between Oswego and Buffalo?

A. I remember that there was either a city or state-owned elevator established on the canal at the lake at Oswego, and I believe there was a Commission case involving the rates related to Buffalo. I have no information, I was not involved in the case directly and I have no information as to when or what the citation of that case was.

[fol. 1679] Q. Well, it began about 1927. I should like to give the reference to the Commission's decision. 146 ICC 293 and 151 ICC 717.

Do you recall that still later there arose a dispute as to the relationship which would exist in the ex-lake rates from Buffalo, from Ogdensburg with respect to Buffalo in New York?

A. Yes, I recall that indirectly, not that I was involved in it.

Q. That is a still more recent case. The Commission's decision will be found in 208 ICC 385, 209 ICC 500, and I am calling attention to this matter so that the Commission will understand that there is competition between all of the lake ports, including Chicago on ex-lake grain to the East.

Mr. Belnap: I have one more question, Mr. Examiner.

Exam. Taylor: Mr. Belnap.

Mr. Belnap: Brought out by your examination.

By Mr. Belnap:

Q. Do the Eastern lines have any interest in the rail lines west of Duluth?

A. What kind of interest?

Q. Financial interest. Do they own any of them?

A. I don't know anything regarding the financial structure of our railroads, but we do have a brotherly interest in all rail carriers, just the same interest in those carriers as we would have in Mr. Enoch's railroad, the Rock Island Railroad down through Illinois. He is right in the hotbed [fol. 1680] of this water situation. What he does, it spreads over to our railroad, so we must have an interest from the

standpoint of not doing things that are going to cut the revenues of the railroads somewhere else.

Q. Mr. Tannehill, as far as the application of your ex-lake rates, either Chicago, Toledo or Buffalo is concerned, are they applicable on grain which comes down the lake which move towards Duluth by truck and never saw a railroad?

A. Yes, if there was such a thing.

Mr. Belnap: That is all I have.

Exam. Taylor: Is that all from this witness? (No response.) You are excused.

(Witness excused.)

A. E. Burwash was sworn and testified as follows:

Direct examination.

By Mr. Baxter:

Q. Will you please state your name and address to the reporter?

A. A. E. Burwash, Champaign, Illinois.

Q. What is your occupation?

A. I am a farmer.

Q. Do you have any affiliation with any country elevator?

A. Yes, sir, I am a director and vice president of the Savoy Grain and Coal Company at Savoy, Illinois.

Q. Where is that geographically located?

[fol. 1681] A. That is on the Illinois Central Railroad, 132 miles south of Chicago; about four miles south of Champaign, Illinois.

Q. In Champaign County?

A. In Champaign County, yes, sir.

Q. Do you know the approximate, that is the average approximate bushels that you ship out of there, that elevator?

Exam. Taylor: Out of an elevator at——

Mr. Baxter: Out of the elevator at Savoy.

Exam. Taylor: At Savoy?

The Witness: That varies with the crop season. Our elevator has averaged about 450,000 bushels a year in the last ten years. We have run as high as 600,000 and as low as 300,000.

By Mr. Baxter:

Q. That is considered one of the large country elevators in Illinois, isn't it?

A. It would be classed in the upper brackets, yes, sir.

Q. Are you a member of the Illinois Agricultural Association?

A. Yes, sir.

Q. Are you generally familiar with the issues in this rate case?

A. I think so, in a general way at least.

Q. You are not familiar with rate structures, as I understand it?

A. Absolutely not. I would hate to make any such statement. I know nothing about rate structures or how they are made or anything, and after seeing what is going on here, I see that it takes somebody a lifetime to know much about them.

[fol. 1682] Q. Has Chicago always been your natural grain market?

A. Yes, sir, the Chicago market. The Chicago futures market, I feel they always set the prices that we get for grain. Our grain prices are established by the Chicago futures market or cash market here in Chicago, less the cost of transportation to this market and the elevator charges, of course.

Q. Do you actually ship your grain to Chicago?

A. Formerly, that is going back—our elevator has been established since 1925—or 1905, and at that time, practically every bushel of grain was shipped to Chicago. It was consigned up here to commission houses. Since that time, due to the establishment of processing plants like Staley's at Decatur and other milling outlets, there has been an increased movement direct to mills and processing plants; so that at the present time, a very small proportion of our corn comes to Chicago. The direction in which it moves will depend upon the crops and the scarcity in various parts of the country.

Our grain may move to Chicago when there is a big export demand. It may move to the Southwest when there is a scarcity of grain in that territory. It may move into southern Illinois for feeding purposes by truck when there is a scarcity there. At the present time, our grain is largely moving to the processing plant at Decatur, Illinois, and to

the distilling interests through Indianapolis and into Kentucky and that territory.

[fol. 1683] Q. Does the movement of grain from the Illinois River have any effect on your grain bids at Chicago?

A. I do not feel that they have any effect. As I stated before, my belief, personal experience is that the price of grain is fixed to us by the price in the futures market or cash market here in Chicago, less our cost of transportation and handling.

Q. What is the usual trend of grain from Illinois points to Chicago?

A. The trend is fixed entirely by the price paid at Chicago as compared with the demand for grain in other directions. In other words, the trend of grain to Chicago will be entirely fixed as to whether the demand is heavier here, so that the price paid is higher than they can get in any other direction.

Grain is influenced, its movement, from a local country elevator—a quarter or even an eighth of a cent will change the movement in the direction of that grain, and in our territory, we are considered in one of the most competitive territories in the State of Illinois. Our grain can go in most any direction. We move grain to St. Louis, Indianapolis, Chicago, Decatur or in any other direction that there is a demand; and so that I feel that the amount of grain coming into Chicago would depend entirely upon whether the Chicago bid was higher or lower than the other competitive bids.

By Mr. Brown:

Q. You are talking about a cash bid now?

A. It may be cash bid or futures. You see, our bids are [fol. 1684] often ten days; that depends somewhat on the futures. They are not entirely fixed by either. Both have their influence.

By Mr. Baxter:

Q. One thing I meant by "trend" is what corn, for instance, is apt to move into Chicago, first?

A. The corn that will come into Chicago first is the corn from a territory which reaches a certain price level. For instance, the psychology of a farmer in selling his grain is

largely based on even figures, you might say. When corn reaches 50 cents, for instance, we will use that as an example, the farmers will sell more at 50 cents than they will at 49 cents or 51 cents. That is just a kind of a psychological thing. Even money sounds good. When corn reaches 50 cents, then the farmer will sell. He will fix his mind probably weeks ahead, "I am going to sell at 50 cents." Down in the territory that hits 50 cents first, those farmers will sell quite a bit of corn. In the territory which doesn't have the natural advantage or the rates that they can sell, they will hold theirs a little longer, and that will fix the corn coming from any territory at a certain time.

I have often observed that the corn in northern Illinois, where they have a natural advantage in rates, moves before our corn does in Champaign County, very frequently.

Q. By low rates you mean that would——

A. That might be either lower railroad rates or natural advantages, such as Illinois Waterway; it doesn't make [fol. 1685] any difference. I can cite you an example today:

Corn in the Illinois River territory is worth 54 cents to the farmers. In our territory at Savoy, it is worth 51. Naturally, there is more corn being moved out of the Illinois River territory than there is in our territory at Champaign County. Our elevator is not handling any corn. Yet the river territory has moved in a lot of corn this fall where we haven't moved scarcely any.

Q. At the previous hearing, Mr. Bradford and Mr. Burwell, in substance, testified that they could not compete, they could not pay the prices to compete with Illinois River grain. Am I correct in that statement?

Mr. Bradford: My testimony, as I recall it, Mr. Baxter, was that if the price of corn was set at Chicago and a reshipping rate of 26 cents was applied on the Illinois River corn, then to meet that competition, we would have to get that 26 cent transportation rate; and if the rate from the other point where we bought corn to New York was 38 cents, we would have to reduce the price we paid the country elevator or the farmer to meet the price established at Chicago.

By Mr. Baxter:

Q. In view of that statement, how would that affect your elevator in central Illinois, where their competition might be reduced?

A. I fell that any reduction in competition for corn to go to a certain point is to my advantage, and undoubtedly [fol. 1686] knowing that a certain milling interest would have to have corn, he can't get it out of the other territory, he will have to take more out of my territory and to get it, he will probably be willing to bid a slight advantage. That is often done.

Q. The only reason, then, you ship through Indianapolis or St. Louis, or to Decatur is that you get as good or better price for your grain at Savoy?

A. Absolutely. I will put it this way. In fact, on an equal bid, we would probably come to Chicago because Chicago is rated as being the fairest market in the country. On a slight advantage, maybe an eighth or a quarter of a cent, we would go the other direction.

By Mr. Brown:

Q. You get better treatment in Chicago than you do anywhere else?

A. Absolutely, on weights and grade.

Q. And inspection?

A. Absolutely. That is a commonly known fact and acknowledged.

By Mr. Baxter:

Q. Well, the fact that farmers living adjacent to the Illinois River have lower transportation costs, is that, in your opinion, any reason why you would like to see those rates cancelled out?

A. Absolutely not. I am in favor of the lowest rates possible because, as I stated, the price I get for my grain is dependent upon the price in Chicago less the transportation cost and the handling cost. Now, if I can get a lower trans- [fol. 1687] portation cost, I can get more for my grain. The man out there gets more for his grain. I just pointed out he is getting at least three cents more a bushel than I am because he has a lower transportation cost; and I would not, emphatically would not want to see him lose his advantage, an advantage which, if lost, would do me no good. It wouldn't help my price one cent and I would hate to be a dog in the manger and say that just because I couldn't get it, he shouldn't have it.

I feel that the benefit of the farmer in this state is that he should have a natural advantage in shipping his grain. I don't care whether it is by rail, by water, or by truck. He should take advantage of transportation and use the cheapest system for him. He has got to do it to compete, that is all there is to it.

Q. Is your elevator a member of the Farmers' Grain Dealers Association of Illinois?

A. Yes, sir, it has been a member for a great many years; 25 or 30 years.

Q. You read from the transcript Mr. Farlow's statement that was put in the record?

A. I did.

Q. As a member of his organization, do you agree with the position he has taken in this case?

Mr. Enoch: Just ask him what the position was he took, then we will see if that agrees with his.

[fol. 1688] Mr. Baxter: Do you want me to read the statement?

Mr. Enoch: I want to see if this man knows what position he did take.

The Witness: As I understand it, Mr. Farlow's position was this, that due to the fact that railroads—I am speaking now of his position to the elevator that is entirely out of the range of the Illinois barge lines; that has no way of using them at all. That his position was that, due to the fact that railroads lost tonnage of grain in the Illinois River Valley, that the rate paid by the other farmers on their grain in the State of Illinois would be raised.

By Mr. Enoch:

Q. What kind of a rate? Do you mean the rail rate?

A. The rail rate was raised, and therefore we were all penalized by that fact. Well, I think that, what little I know about the fixing of rates, there might be a slight reason for that, but everything else that has happened to the railroads in the last 20 years would also be involved.

They have lost coal hauling. The Illinois Central has lost lots of coal hauling. They have lost lots of livestock by trucks and there are so many other factors besides the loss of grain in the fixing of rates, that I think his state-

ment there that a 5 per cent loss in grain caused a 5 per cent increase in rates is rather far-fetched.

Q. Were you informed that that was his position?

[fol. 1689] A. I read it in the record. I didn't know anything about it until I read it yesterday afternoon.

Mr. Baxter: I believe that is all.

Exam. Taylor: Let me see. Can you develop from this witness just what his position is as to the cancellation of the application of the proportional rates east, just briefly?

Mr. Baxter: All right. I thought we answered that.

Exam. Taylor: I think you did too, but I just wanted to——

By Mr. Baxter:

Q. All right, will you please state the position of the people whom you represent as to what your position is in this proceedings?

Mr. Enoch: Pardon me, may I ask him to state who he does represent?

Exam. Taylor: He stated that.

Mr. Baxter: I qualified him as the vice president and director of the Savoy Elevator.

The Witness: That is right.

By Mr. Enoch:

Q. I thought you were talking about some farm organization?

A. No.

Q. I don't understand you are speaking for anybody but your own interest?

A. That is right.

Mr. Baxter: I asked him if he was a member.

The Witness: Speaking for the elevator members and [fol. 1690] farmers in my own vicinity, as a director of the Illinois Grain Corporation, we take this position: That we do not want to see any advantage in transportation cost lost by an group in the State of Illinois or any place else, for that matter, because our interests are for lower transportation in any way in which it can be obtained.

By Exam. Taylor:

Q. Whether you get the advantage or somebody else?

A. Some other farmer, that is right.

By Mr. Baxter:

Q. But in this particular proceedings, you are only speaking for the Savoy Cooperative Elevator Corporation?
A. That is right.
Q. And as a farmer?
A. And as a farmer, yes, sir.

Mr. Baxter: Does that answer the question?
Exam. Taylor: Any questions by protestants?
Mr. Root: Just one question.

By Mr. Root:

Q. Mr. Burwash, are the bids put out by your Savoy elevator bids at the elevator or F.O.B. the farm?
A. In our territory, our bids are all at the elevator. Our territory only extends an average of about six miles in diameter, and most of our farmers have their own trucks or they hire a man who sells and trucks the grain to the elevator, and our bids are all F.O.B. the elevator.
Q. Of course, when you said in your testimony you are [fol. 1691] paying 51 cents there today, you meant delivered at the elevator?
A. Yes, sir.

Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. Mr. Burwash, did you state all of the state organizations in which you hold any position?
A. No, sir.
Q. Are there some in which you hold a position which you didn't state?
A. I am a member of and an officer of Illinois Grain Corporation.
Q. What officer are you?
A. President.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Burwash, I understood that you are engaged in the farming industry?
A. Yes, sir.

Q. Are you in any sense what we term in traffic parlance as a rate man?

A. No, sir.

Q. Are you here intending in any way to indicate to the Commission that the present application of these rates is a correct situation from a rate standpoint?

A. I am not competent to answer that.

Mr. Baxter: I object to that, because Mr. Burwash is not [fol. 1692] qualified as a rate witness and he has stated that he knows nothing about freight rates.

Exam. Taylor: He also just now stated that he wasn't competent to answer.

The Witness: That is right.

By Mr. Cole:

Q. Then is your position this, as a member of the farming industry, and is your position simply this, Mr. Burwash: That if this is right from a standpoint, you would like to see it continued, but if it is wrong, you are not here asking that a wrong be continued, is that correct?

A. I am making only the request that fair rates, low rates, be maintained.

Mr. Cole: That is all. Thank you, Mr. Burwash.

Exam. Taylor: Mr. Day, any cross examination?

By Mr. Day:

Q. How much of a farm do you operate?

A. 770 acres.

Q. And you raise corn and other crops, do you?

A. Yes, we raise from ten to twenty thousand bushes*l* of corn.

Q. Per year?

A. Per year.

Q. How many did you have in 1939?

A. In 1939, about 13,000.

Q. Have you disposed of it?

A. No, sir.

Q. Did you get a Government loan on it?

[fol. 1693] A. On part of it.

Q. How much?

A. About 4,00 bushels.

Q. Is that stored on your farm?

A. Yes.

Q. Is your farm all in one tract?
A. No, sir, it is in three tracts.
Q. All located near each other?
A. Yes, sir.
Q. Did you raise any other crops besides corn?
A. Wheat and soy beans for market.
Q. Have you made any disposition of the 1939 crop other than the 4,000 bushels covered by the Government loan?
A. I have sold—no other disposition of my corn crop, no.
Q. You are holding it?
A. Yes, sir.
Q. For a higher price?
A. Possibly. We can't tell what the future has for it. We are holding it, that is all.
Q. How many bushels did you have in 1938?
A. In 1938, I wasn't farming quite as much land; I only raised about 11,000 bushels of corn.
Q. How many acres did you have then?
A. 540.
Q. Did you acquire this additional land in 1939?
[fol. 1694] A. I rented it.
Q. You rented it?
A. I rented 240.
Q. How much do you own?
A. I own directly 210 and have an interest in another half section.
Q. You reside in town, though, don't you?
A. No, sir, I reside on the farm; three miles south——
Q. How far is that from town?
A. South of Champaign, three miles, on Route 45.
Q. None of your corn would be handled via the waterway, would it?
A. No, sir, never has and never will, unless trucking and water rates—or the railroads raise their rates too much.
Q. If you paid any transportation charges on corn outbound, it would be by rail?
A. Yes, sir, on the Illinois Central Railroad.

Mr. Day: That is all.
Exam. Taylor: Mr. Enoch. Mr. Bradford.

By Mr. Bradford:

Q. Mr. Burwash, on these bids you receive from Indianapolis, what basis did they make?

A. They are bid so much track, as I understand it. Understand that I am not the manager of the elevator, but as a director, I know about how he handles his business.

Q. Isn't it true that those bids are generally based on an [fol. 1695] 18 cent freight rate to the Ohio River?

A. I would have to answer that, I understand that that is true.

Q. This one you spoke about going to Indianapolis or through Indianapolis to the distillers was all bought on the Ohio River basis?

A. Having seen some of the bids, I imagine it was, although they may have some other basis I don't know about.

Q. In that case, there was a market away from Chicago that attracted the grain through Indianapolis?

A. Yes, sir.

Q. Can you give me an estimate, that is the percentage of movement of your corn to Chicago, Decatur, Indianapolis and St. Louis during the past year?

A. I haven't those figures, no, sir. I can only say that that varies with different years. I have—we made a slight study of it in 1937 and it ran about one-third in each direction. That is the only figures I can give you.

Q. That is, one-third to the Southwest and one-third to Chicago?

A. And one-third to Indianapolis.

Q. And one-third to Indianapolis?

A. Yes, that was the way it ran in 1937.

Q. Do you think that Indianapolis could sell corn in New York at a different price than Chicago could sell it?

A. I know nothing about the rates, so I can't answer that.

Q. I am talking about price.

[fol. 1696] A. I don't know.

Q. You don't know?

A. No, I don't know anything about what Indianapolis can do that Chicago can't do.

Q. I am just asking could anybody, could you sell corn in New York at a different price than Chicago could sell. That is, could you sell at more than the man at New York could buy it from Chicago?

A. I don't know that they could. I do know this, that sometimes we can sell grain at Indianapolis at a different price than other people can, or sometimes we can sell grain at Chicago at a different price than other people can, because we happen to get a bid for a small lot that somebody

is willing to pay up for, and we do have a slight variation there, maybe a quarter or a half a cent. They will spring the market.

Q. Generally speaking, you can't sell corn in Chicago that is—I will put it this way. You couldn't sell corn in New York for more than your competitor was selling it. Generally speaking, that would be correct.

By Mr. Baxter:

Q. Do you get any bids from New York?

A. No, we don't get any bids; we know nothing about the New York market.

By Mr. Bradford:

Q. Ordinarily, they do sell corn in Chicago, your competitor at the next station; the same grade of corn?

A. They, of course, average up. I just stated there are [fol. 1697] times when due to a certain grade of corn being in demand and we happen to have it, we can spring the market.

Q. I am talking about the same grade and class of corn, you do sell your corn——

A. I have known it to happen in the same day.

Q. It wouldn't be a usual proposition?

A. No, but there are circumstances that always arise. There are no two people always put out the same bid in Chicago, that is what I am getting at. Some people are higher and some are lower, due to their outlets.

Q. If the dealer in corn at Chicago made a bid in New York on the 26 cent rate, your freight rate was 38 cents to New York, you believe that the man in the interior could pay up enough to meet that bid on the 26 cent rate from Chicago?

A. Our bid would be based entirely on the bid, less the cost back from the——

Q. I am talking about the man in the interior, such as Indianapolis, trying to buy your corn on the 38 cent rate to go to New York.

A. Well, I——

Mr. Baxter: He has testified he doesn't know how that grain is bought. He is offered a price on track. You are asking him a lot of differences in rates he says he doesn't know anything about.

Mr. Bradford: I am just asking him a simple question in [fol. 1698] arithmetic.

By Mr. Bradford:

Q. If it cost 38 cents to take corn direct from your station at New York, it costs 26 cents to take it from Chicago, wouldn't the price paid to you have to make up that difference? It is a very simple question.

A. I think this. In answer to that question, I wouldn't sell—I wouldn't be able to sell over a high rate in competition with the fellow that would be able to sell over a low rate. There would be two things that would happen. He would get a higher price for his corn and I would get a lower one. That is one reason and it extends to anybody shipping that has a natural advantage over me and I can't compete with it. I can't compete with the fellow that raises corn in Ohio on prices when it comes to going to New York, neither can I compete with the man east of me that gets a better freight rate, or any place else to New York. His corn will move first on that price. Maybe later I can get the price.

Mr. Bradford: That is all I have.

Exam. Taylor: Mr. Brown.

By Mr. Brown:

Q. Mr. Burwash, the record so far in this case shows that there was brought into Chicago by the Illinois Waterways in 1939, 13,206,000 bushels. The same record also shows that the Illinois Central Railroad, which serves you, brought into Chicago 13,813,000 bushels. Would you consider that both of those amounts or either one of them, take the water- [fol. 1699] way first, that amount of corn coming into the Chicago market in one year would have some effect on the price?

A. You mean in itself?

Q. Yes.

A. Of course, 13,000,000 is a mere drop in the bucket in the corn. The price of corn is based on the entire crop of corn wherever it is located, and that has more effect than when it comes in over a certain railroad or a certain way of getting in. I don't think the way corn arrives in Chicago has any effect. I think the amount of corn arriving is the thing that fixes the price of corn in Chicago, or the amount of corn available that can be brought in; not how it came in.

Q. And to other markets as well?

A. Yes.

Q. But if the effect of 13,000,000 bushels via the waterway, almost as much as the greatest amount brought in by any one railroad to Chicago, if it had the effect that you previously stated, that it sells for 3 cents more a bushel than you can get at Savoy, doesn't that have an effect?

A. Just a moment, I said it brought the farmer three cents more, not that it sold for any more in Chicago. It sold for the same price at Chicago and it didn't affect the difference in Chicago, whether that farmer back there got three cents less for his corn and paid it to the railroad for bringing it in; when it got into Chicago, it was all the same price.

[fol. 1700] Q. Then I understand that the price paid, the cash price paid in Chicago during 1939 was, to your knowledge, the same as the cash price paid for grain that came in by rail?

A. I don't pretend to have any knowledge of what was done on the Chicago market. I know this, that with the same billing privileges, corn will ordinarily sell within a small range in the same price the same instant on the market in Chicago.

Q. Perhaps you weren't here, but if you were here when Mr. Allen testified, didn't you hear him say that this rail grain, rail corn that comes in from these railroads tributary to the waterway, adjacent to the waterway, was discounted a half a cent to two and a half cents a bushel?

Mr. Root: Now, just a moment, Mr. Examiner. I wish he would state the rate on which that corn was shipped into Chicago.

Mr. Brown: I asked him if he heard it.

The Witness: No, sir, I didn't hear it.

By Mr. Brown:

Q. Now, supposing that 200,000 bushels comes into Chicago today and May futures are sold against that, what effect do you think that 200,000 coming in by water, what effect that would have on the May price?

A. The same effect that 200,000 bushels coming in by rail would have.

Q. It would have no other?

A. No other.

Q. But if it had a depressing effect because it was laid [fol. 1701] down in Chicago for a lower price, laid down for a lower price, wouldn't that affect your ability to put grain into Chicago?

A. I do not think that the manner in which the grain comes in, providing it has the same transportation privileges, has any effect on the price that corn brings in Chicago.

Q. Your theory is that if it all had the same price going out, it doesn't make any difference about the transportation costs coming in?

A. Except that that transportation cost is largely reflected back to the producer, because it is the producer that pays that transportation cost into Chicago.

Q. If 13,000,000 bushels comes into Chicago by waterway from points not on the water but spread out to territory 38 and 40 miles, and there is a saving to the producer, as you think, of 3 cents a bushel, doesn't that displace the grain that you might sell in Chicago?

A. Not one bit, because most of that grain has a natural advantage by water or by rail; and most of that territory, that grain would still come in ahead of mine by rail, because it has a lower freight rate than I have, and the water only enhances its advantage, which in no way affects my position.

Q. Now, Mr. Burwash, you said you didn't know anything about rates, but I am going to test them. Don't you have the same rate to St. Louis as you have to Chicago from Savoy?

A. Yes, sir.

[fol. 1702] Q. And you know it is 12 cents on 100 pounds?

A. Yes, sir, that is common knowledge.

Q. Would you accept my statement that points west of La Salle in the vicinity of the Illinois Waterway is higher than 12 cents to Chicago?

A. I will, but when you come into most of the grain, it is mostly this side of La Salle that comes up the Waterway.

Mr. Baxter: Mr. Brown, may I ask, away from the river, you mean?

Mr. Brown: Yes.

Mr. Baxter: Not from points that are trucking to the river?

Mr. Brown: Oh, yes, Sheffield, Annawan and all those places; Walnut, Mendota.

Mr. Baxter: A point that has a higher rate than 12 cents can still truck to the river?

Mr. Brown: Yes, because Mr. Burwash is in Illinois, where the St. Louis market may have an influence. He has an advantage.

The Witness: That is a natural advantage which I have as compared with some other people that are close to Chicago, and I just give credit to the river for the same thing. In other words, my price on corn is not fixed by what little corn may come from the Illinois River Valley. It is fixed by the entire crop all over these United States and the demand for it.

By Mr. Brown:

Q. Let's get a little closer to this. If there is 200,000 a day coming in by water to Chicago by barge and that is hedged in the next future, don't you think that has any [fol. 1703] effect on the futures price?

A. Not any more than 200,000 bushels coming in from any other direction, as long as it is hedged.

Q. If it is the greatest quantity that is coming into Chicago day after day, don't you say it does?

A. I would say that the effect of the hedges has nothing to do with where the corn comes from. If it didn't come from there and the demand was such, it would come from some place else and still be hedged.

Q. That is what I am saying. But it couldn't come from your particular territory as long as this movement continues and is in the volume it is today?

A. It couldn't, and it does at times come in competition with it, but we don't get quite as much money for it. We have to sell it at a little cheaper price. They have an advantage in transportation.

Q. In other words, because there is a difference in the charges up to Chicago?

A. Yes, that doesn't affect the price at Chicago any more. That corn would have to move some time, either by rail or water, if it was surplus corn. And the price I get for corn in Chicago is not affected by the means by which that corn reaches the market. It may reach it a little ahead of where it would otherwise, but that is all. It would still be out and thereby a depressing effect on the market, if you want to [fol. 1704] look at it that way.

Q. The reason I am a little tenacious about this point is because you said that formerly all your grain, not all of your grain but the bulk of your corn moved to Chicago.

A. Yes, sir.

Q. Now, we realize processors have come up, such as Decatur and——

A. Yes, General Foods and all.

Q. You ship to Kankakee?

A. White corn.

Q. Do you ship any white corn to Kankakee?

A. Yes, sometimes we do, once in a while. We are not very much of a white corn area; not over 40, 50,000 white corn.

Q. Let's say this: Is the effect at times of the futures market prices, no matter how they are made, lessening your chances to ship to Chicago when the barge grain is moving and giving you fewer markets bidding for your grain?

A. I don't think so, because when the barge movement is on, it takes that competition away from other points to which I am interested in hauling, like Decatur and perhaps the river territory down through Indianapolis.

Exam. Taylor: Just a minute. His counsel had to answer the telephone.

Mr. Brown: Yes.

Exam. Taylor: We will recess for five minute-.

[fol. 1705] (A short recess was taken.)

By Mr. Brown:

Q. Mr. Burwash——

Exam. Taylor: Just a minute. Go ahead.

By Mr. Brown:

Q. I believe you said you are president of the Illinois Grain Corporation?

A. I did, yes, sir.

Q. Is the Illinois Grain Corporation the lessee of the Farm Credit Administration of the elevator now operated by the Cooperative Allied Grain Dealers Association at Morris, Illinois?

A. Yes, sir.

Q. And that lease——

Mr. Belnap: You said the lessee, didn't you?

By Mr. Brown:

Q. He is the lessee of the Farm Credit Administration.

A. Yes, sir.

Q. Which took the elevator over from the Farmers National Grain Corporation?

A. That is correct.

Q. And you as president of the Illinois Grain Corporation, which leased it from the Farm Credit Administration, released it to the Allied Grain Corporation?

A. We did not re-lease it. We have an operating agreement with them. We did not re-lease it. It is merely an operating agreement with them.

Q. Between you and the Cooperative Allied Grain Deal-
[fol. 1706] ers Association?

A. Yes, sir, it is not strictly a lease.

Q. But you have leased it from the Farm Credit——

A. We lease it from the Farm Credit Administration, and instead of operating it ourselves, we have an operating agreement with the Cooperative Allied Grain Corporation.

Q. Cooperative Allied Grain Dealers Corporation?

A. Grain Corporation.

Mr. Baxter: In connection with that——

Mr. Brown: Wait just a minute.

Mr. Baxter: I just want to correct one thing.

Mr. Brown: Go ahead.

Mr. Baxter: You asked me when I was on the witness stand about this very thing, and Mr. Burwash can correct any misinformation I had. I told you that my information was rather meager, and this will straighten out what you asked me.

Mr. Brown: I didn't ask you about the connection of the Illinois Grain Corporation with this particular elevator, because it was stated in one of the protests what the arrangement was. I asked you about the membership of the Illinois Agricultural Association.

Mr. Baxter: You asked me about the Morris elevator.

Mr. Brown: Perhaps I did; I have forgotten.

By Mr. Brown:

Q. Well, now, under this operating agreement, what is the substance of it? What is the basis of it?

[fol. 1707] A. Is that necessary?

By Exam. Taylor:

Q. Is it in writing?
A. It is in writing, yes.

Mr. Baxter: Now, he has not testified, Mr. Examiner, for the Illinois Grain Corporation in this proceedings. He has qualified as a farmer and the vice president of the Savoy Cooperative Elevator Company.

Mr. Brown: But he strengthened all that by saying he was president of the Illinois Grain Corporation and was a member, some sort of member or officer of the Illinois Agricultural Association.

Mr. Baxter: Well, he is not qualified on this record as representing the Illinois Grain Corporation.

Mr. Brown: Well, if he is president, he ought to be qualified.

Mr. Baxter: He has no authority to represent the Illinois Grain Corporation in this proceeding.

Mr. Brown: Well, he is your witness and you are the Illinois Agricultural Association's representative.

Mr. Baxter: Yes.

Mr. Brown: And you brought him here as your representative.

Mr. Baxter: Yes, sir, but not as the Illinois Grain Corporation.

Mr. Enoch: May I make this suggestion, that I think this question is proper essentially, because he has already testi- [fol. 1708] fied the interest this man has in the outcome of this proceeding.

Exam. Taylor: The witness may answer. Do you want the question read?

The Witness: You may read the question, please.

Exam. Taylor: Read Mr. Brown's question.

(Question read.)

Mr. Baxter: I understand the Examiner asked if it was a written contract, and I don't think that question has been answered.

The Witness: It is a written contract, Mr. Examiner.

Mr. Brown: He said yes.

Mr. Belnap: Oh, I beg your pardon.

The Witness: Of course, I can give you in substance but I cannot give you the exact terms as written in the agree-

ment. I would have to have the agreement before me to do that.

Exam. Taylor: Mr. Brown only asked for the substance.

The Witness: The substance is this. We lease the elevator from Farm Credit for a stated sum and an amount per bushel of the grain that goes through it.

By Mr. Brown:

Q. A stated sum per annum?

A. Yes.

Q. And in addition, a certain amount for every bushel that goes through it?

A. That is right.

Q. That is in addition to the annual sum?

[fol. 1709] A. Yes, sir.

Q. All right.

A. Then our agreement with the Cooperative Allied Grain Company is that they pay us the amount that we pay Farm Credit, plus a certain amount per bushel on all the grain that goes through.

Q. In other words, the Allied Grain Dealers reimburse you for the per bushel amount that you pay the Federal Farm Credit?

A. Yes, sir, and in addition to that an additional amount per bushel.

Q. Per bushel?

A. Yes, that varies on different grains and so forth.

Q. But it leaves you some money over and above what you would pay on the per bushel basis to the Federal Farm Credit?

A. It did last year, yes.

Q. In other words, the amount you receive per bushel, varying in amount according to the grain, is greater than you pay the Federal Farm Credit on the bushel basis?

A. It was last year.

Q. Now, about the annual lease, which is separate from the bushel arrangement, how are you reimbursed for that?

A. They pay that.

Q. Oh, the Allied?

A. Yes, as I stated, they pay us the exact amount that we pay Farm Credit plus—that includes both the annual amount plus an amount per bushel.

[fol. 1710] Q. In other words, they reimburse you for all you pay the Farm Credit and you get your profit on a bushel basis?

A. Yes, sir, that is it.

Q. When was that lease executed? When did this agreemeent take effect?

A. It took effect about June, 1938.

Q. Is the settlement on a gross basis or a calendar basis?

A. Monthly basis.

Q. Monthly basis?

A. Yes.

Q. Well, have there been any months since the agreement was taken on which you received no money, no profit?

A. I cannot answer that. We operate two elevators in that manner, and I know one of them, at least, there are months go by that we don't get anything, they don't handle grain. As far as—no, there hasn't been any month we have not received anything.

Q. I am talking about the Allied Grain Dealers.

A. Yes.

Q. That is the only one with which you have got an agreement, the Morris elevator you have got an agreement with, the Cooperative Allied Grain Dealers?

A. Yes.

Q. This other one has got nothing to do with that?

A. No.

[fol. 1711] Exam. Taylor: Any further cross examination of this witness? Anything on redirect?

Mr. Belnap: I have a question.

Exam. Taylor: Mr. Belnap.

Redirect examination.

By Mr. Belnap:

Q. What is the Illinois Grain Corporation, Mr. Burwash?

A. The Illinois Grain Corporation is a corporation organized to handle grain either on a commission basis, or otherwise, in the State of Illinois.

Q. Who owns it?

A. It is owned by members of the—by farmers' elevators who own about 50 per cent of the stock and by the Illinois Agricultural Association, which owns about 35 per cent of

the stock, and by various farm bureaus in the state, which own about 15 per cent of the stock.

Q. Is that ownership scattered throughout the length and breadth of the state?

A. Yes, sir, entirely covers the grain territory in the state.

Q. Do you personally have any financial interest in the Illinois Grain Corporation?

A. No, sir, not one penny. No individual has.

Q. Would you personally benefit if it was profitable?

A. Only to the extent that it might help me, as an individual, to dispose of my crops, if they could be of any par-
[fol. 1712] ticular benefit directly back through the elevators. We have a set-up so that our profits can be distributed back to the individual growers who work through the member elevators, and they, in turn, through Illinois Grain.

Q. Has the Illinois Grain Corporation handled any of your grain on a commission basis?

A. It was not my grain when they handled it. It was owned by the local elevator and sold as their grain. No, sir, it doesn't handle grain for individuals to any great extent.

Q. Take up the local elevator at Fisher.

A. Yes.

Q. Has the Illinois Grain Corporation—is that the name?

A. Yes, sir.

Q. Has that handled the grain, purchased grain, or handled grain for the elevator on a commission basis?

A. Yes, sir.

Q. To what extent?

A. About one-third of their volume goes through Illinois Grain, of the elevator volume.

Q. Has some of the grain that is so handled been sold to the Indianapolis market?

A. Yes, sir, largely that way.

Q. Has that grain been hedged on the Chicago market by Illinois Grain?

A. Yes, sir.

[fol. 1713] Q. As far as hedging has an effect on the futures, it has the same effect even if the grain goes to Indianapolis, is that correct?

A. Yes, sir, this grain, I happen to know as president of Illinois Grain, that we largely hedge for the people who

buy this grain from us and move it from Indianapolis and I know they hedge it in Chicago.

Mr. Belnap: That is all.

Exam. Taylor: Does that bring up anything further? Is that all from this witness? (No response.) The witness is excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Root: Mr. George Mellen.

G. E. Mellen, was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. State your name, please.

A. G. E. Mellen.

Q. Where do you reside, Mr. Mellen?

A. Mazon, Illinois.

Q. In the village of Mazon, or near Mazon?

A. About two and a half miles south of Mazon.

Q. On a farm?

A. On a farm.

[fol. 1714] Q. Mr. Mellen, you are familiar with the issues in this case, that is, in a general way at least? You have heard lots of this testimony?

A. I just am familiar with the farming and elevator end of it, Mr. Root, as far as I would be concerned.

Q. Do you feel that you have an interest in this case?

A. Definitely.

Q. Have you prepared a statement which you would like to make for the record?

A. I have, if you please, Mr. Root.

Q. Will you proceed to make it.

By Exam. Taylor:

Q. Before you proceed, would you mind stating where Mazon is?

A. Why, certainly. Mazon is located on the Santa Fe about 70 miles west of Chicago.

Mr. Root: Northwest.

By Exam. Taylor:

Q. In what county?

A. In Grundy County, Mr. Examiner.

Q. How far is it from Morris?

A. Ten miles south of Morris. Something over 23 years ago I started in the grain business in Mazon. I have been actively engaged in that line of work since that time. I live on a 240 acre farm which I own which is located two and a half miles south of Mazon on Route 47. I spend a certain portion of my time in actively watching operations on my [fol. 1715] farm. I mention this factor as a little later I expect to show the advantage to me as a land owner of waterway transportation. I am going to attempt to point out my personal experiences as well as the observations I have gathered in my office as to the experiences of other farmers in the Illinois Valley.

At the time I started in the grain business 23 years ago we had a 5 cent I. P. rate on all kinds of grain to Chicago. A little quick subtraction will show you this was in the year 1916. We enjoyed this rate for a year or so when the Santa Fe raised the rate to a 9½ cent I. P. No one would question at that time but what they were justified in raising this rate. General maintenance costs together with higher labor at this time made such an action necessary. Again, farmers didn't object as they were getting the highest prices in American history for the products of their farms. Figuring transportation costs as against the price the farmer was receiving for his products, we find that a farmer could ship 35 or 40 bushels of corn to Chicago for the price he was receiving for one bushel on the market.

The war ended and the price of farm products declined seriously. They declined so badly that it was costing the farmer one bushel of corn to move 3 or 4 bushels to the Chicago market. It doesn't take much of an imagination to realize that a 9½ cent per hundred freight rate on corn selling in Chicago at less than 40 cents for a hundred [fol. 1716] pounds, which would net less than 20 cents per bushel is confiscatory.

By Mr. Day:

Q. Now, Mr. Mellen, will you fix the time or period that you are talking about?

A. Which period do you mean, now?
Q. The one you are talking about.
A. I believe I started back, Mr. Day, and said——
Q. You said after the war.
A. Yes, let's get up——
Q. That the price per bushel of corn would be one bushel out of three or four bushels to Chicago. What time do you mean that it cost that?
A. '32, we will say.
Q. That long after the war?
A. Yes.
Q. Fourteen years after the war ended?
A. That is right, the rates were still the same, Mr. Day.

By Mr. Root:

Q. Will you proceed with your statement, Mr. Mellen.
A. No industry can afford to take 25 per cent of the total of their proceeds for the use of a box car to move their grain less than 70 miles from Mazon to Chicago.

A man, with very little capital, saw an opportunity to engaged in the grain business on the Illinois Waterway in Morris. I suppose I had better set a time.

Q. That is right, go on ahead and we will anticipate Mr. Day.

[fol. 1717] A. 1934. A very modest start was made by the erection of a small elevator and from this modest start many more elevators have been built on the Illinois Waterway.

After considerable time had elapsed the railroads did reduce their rates in the Illinois Valley. Their first experiment in the way of a reduction on the Santa Fe gave us a 7 cent lake local rate. Let's see, that was about 1935.

Q. 1935?

A. I would say. However, when navigation closed the rate was immediately raised to its former level. As a result of this action of cancelling the rate while the river was closed many farmers could see that they never would have had a cut had it not been for the lower river rates. A very natural result was, that more of our farmers were demanding that their grain be moved by water.

In the case we are discussing here today we find that certain interests would like to see privileges enjoyed by the waterway taken away. They do not have anything to offer

the farmers of the Illinois Valley that will take the place of these privileges.

The Illinois Valley farmer, in the estimation of well informed people, is going to object to any such action. I base my statement upon the fact that thousands of Illinois Valley farmers have signed a petition to the members of Congress asking that these privileges be maintained. The farmers' [fol. 1718] attitude is, why destroy something that is workable, economically sound and in which millions of dollars of the taxpayers' money have been spent. The thought I have been trying to convey——

By Mr. Enoch:

Q. You mean the taxpayers in the Illinois Valley, or throughout the United States?

A. My understanding was originally there was a bond issue of the State of Illinois which has since been retired.

By Mr. Root:

Q. That $20,000,000 bond issue, Mr. Mellen?

A. $20,000,000 as I understand it.

By Mr. Enoch:

Q. Is that what built the Illinois Waterway?

A. The Illinois Waterway was placed there by nature, of course, but it was improved by that bond issue.

Q. Does that constitute the total improvement?

A. I wouldn't know. The thought that I have been trying to convey is, that rail rates were confiscatory when the waterway was opened for navigation at Morris, Illinois. Farmer prices were exceedingly low. Waterway transportation became available to the farmers of the Illinois Valley. The waterway is here, placed here by nature and improved by the taxpayers. Our farmers feel it should be used and they resent anything that will take away from them this cheaper method of handling their crops until such time as a better method is found.

By Mr. Root:

Q. Mr. Mellen, I believe you stated you were the manager of the Mazon Farmers Elevator Company?

A. President or manager, Mr. Root.

[fol. 1719] Q. That is Cooperative?

A. Yes, sir.

Q. About how many bushels of grain do you handle through that elevator each year?

A. About 700,000 bushels.

Q. And that is the average, sometimes more or less, depending on the crop?

A. That is the mean average.

Q. From your experience as an elevator operator and farmer, what price advantage, if any, do you believe the farmers in your locality gain by reason of having their grain moved over the Illinois Waterway rather than by rail?

Mr. Enoch: I object to that, unless he can cite specific instances. He is a man that is buying corn; he ought to tell us how much he paid the farmer, when he paid it, and to whom he paid it.

Mr. Root: Just a minute, Mr. Enoch. He was just pulling that out of his pocket, the specific example.

By Mr. Root:

Q. Will you proceed to give the specific example, Mr. Mellen, that Mr. Enoch asked about.

A. It wouldn't have been at all difficult to have made out hundreds of cases such as I have here at the present time, up to date. I mean by that, within a reasonable time of the hearing. I have used the dates of December 1, 1939, December 7th, December 16th and in each instance, have [fol. 1720] named the man's name from whom we purchased the corn, his address——

Q. Proceed to give that example.

A. Yes. On December 1, 1939, we purchased and delivered to the river 916 bushels of corn——

Q. When you say the river, will you say where on the river?

A. At Morris.

Q. Allied Grain?

A. Allied Grain. From the farm at William Morris, R. F. D., Morris, Illinois, and his farm is located five and a half miles south of Morris, Illinois; and on that particular day, the lake bid net Chicago, after the close of the market, was 52.5.

By Exam. Taylor:

Q. Cents?

A. I beg your pardon?

Q. Cents?

A. Yes.

By Mr. Root:

Q. Cents per bushel?

A. Yes.

Q. And all of these figures you are going to give will be cents per bushel, Mr. Mellen?

A. That is right. Freight at 5½ cents per hundred would be 3.2, leaving 49.3. Less weighing and inspection of a quarter of a cent, would leave 49.1. In our territory we furnish trucks exclusively for hauling the grain——

Q. In other words, your bids are F. O. B. the farm?

A. F. O. B. the farm. So we have a 1 cent hauling charge [fol. 1721] to the river, which brings that down to 48.1, and we deduct a local elevator profit of 2 cents, and we have a result of 46.1 that we would have bid this farmer, using our 5½ lake local rate.

Q. Now, Mr. Mellen, you said in that case there was a 1 cent trucking charge from the farm to the river. Do you mean from the farm to the river, or the farm to your elevator, to ship by rail?

A. Farm to the river.

Q. I mean, have you taken a different example. You were going to send it by rail.

A. Yes, excuse me. It would be farm to the elevator in that case, but in both cases the charges are the same.

Q. I just want it straightened out in the record.

A. On that particular day, our river bid, after the close, was 50.5 cents, and we have the same trucking charge of 1 cent to get to Morris, leaves us 49.5, less our local elevator profit of 1 cent, in this particular case, would leave 48.5 or 48.2 cents, the exact figure that we paid the farmer that day.

Q. Mr. Mellen, will you explain right here why you only take, deduct 1 cent for your local elevator profit in a case of selling to the Allied Grain on the river, whereas you deduct 2 cents if you are going to ship to Chicago by rail?

A. In the case of our sending the grain direct to the river, it leaves the farm and goes down to the elevator and we

[fol. 1722] have no elevation expenses against it whatsoever. And in a case where it would be taken by rail, we naturally would have elevation and shrinkage that we would have to consider.

I would like to carry the illustration just a little——

Q. Proceed, I just wanted to clear it up at that point in the record.

A. Certainly. I would like to carry the illustration just a little bit further and use the I. P. rate, and the bid on the I. P. that particular day was 53.1.

Q. What is the I. P. rate?

A. Our proportional rate to Chicago, which is 9½ cents or 10 cents. I beg your pardon.

By Mr. Enoch:

Q. Whose bid?

A. This is what I got over the radio; a board bid, I suppose it is called. It is put out daily by the board. I don't know who makes it or where it emanates from.

By Mr. Brown:

Q. That was during the session?

A. After the close.

Q. Call bid?

A. I wouldn't know. That was the Illinois Proportional bid, was 53.1. On a 10 cent I. P. rate, we have 5.6 freight expense, less a quarter of a cent weighing and inspection, less a 1 cent trucking charge, again less a 2 cent elevator profit, and on a 10 cent I. P. rate, we could have paid the same farmer 44.1.

Now, taking the average sales prices for that particular [fol. 1723] day, the cash sales prices for corn that particular day, we found that we had an average of 54.7. Now, we would have the—we are going to have a lake rate in this particular case and we are going to sell this average sale corn on the lake rate of 5½ cents higher, an expense of freight of 3.2, less a cent commission in Chicago, less a quarter of a cent for inspection ad weighing, less the regular charge of 1 cent for hauling, less the local elevator's 2 cent profit, and we find that if we had used the average cash sale price for the day, we would have paid the farmer 47.3 cents, using the lake rate in that case.

Just to get the record straight on the figures that I have been going through here, on a 5½ cent rate we could have paid 46.1. Our river bid permitted us to pay him 48½ cents. A 10 cent I. P. bid would have permitted us to pay him 44.1, and the average cash price sales for the day of 47.3.

By Mr. Root:

Q. As I understand, then, from that exhibit, Mr. Mellen, you actually paid this particular gentleman on that purchase 2.4 cents per bushel more for his corn as a result of selling it to the—for shipment over the Illinois Waterway than you could have over the cheapest form—than you could have, had it been sold and shipped by rail at the cheapest rate then available?

A. Well, that would have applied, Mr. Root, as against the 5½ cent lake rate, as against the river price.

[fol. 1724] Q. How much was that 5½ cent lake?

A. It would have been 2½ cents in that case.

Q. I thought it was 2.4?

A. Well, 2.4., yes.

Q. That is what I mean. In other words, the farmer had 2.4 cents a bushel more?

A. Yes.

Q. Now, Mr. Mellen, just to save time, I know that you have a number of other examples there. Is it a fact that you, from your records, could repeat illustration after illustration showing specific purchases and dates and where the benefit accruing to the farmer was absoutely the same as this example just given?

A. If it would be of any benefit to the records, we could have built them up for thousands of bushels of grain.

Q. And you are just giving this as one representative example?

A. Well, I have three. It isn't necessary to go into them.

Q. Well, our time is short this morning.

Mr. Enoch: Just looking over these, do you think that you are justified in relying on that statement?

Exam. Taylor: As representative?

Mr. Root: I think so. I am familiar with these elevator men. I know as a practical matter the farmers are getting more.

Mr. Enoch: That is not right. You are asking this witness if it is typical, and I am perfectly willing, if you [fol. 1725] say it is typical and you say you are informed, to accept it, as far as I am concerned.

Mr. Root: Let me say this. I have known Mr. George Mellen for many years, and if George Mellen says he takes this from the books, I would rely on what he tells me.

Mr. Enoch: I thought you had gone over them.

Mr. Root: I have never gone over the elevator books, if that is what you mean. I have gone over this example. I will vouch for Mr. Mellen's integrity.

By Mr. Root:

Q. Mr. Mellen, over what area, approximately, does the elevator of which you are president and manager purchase grain?

A. Very largely Mazon Township.

Q. And that is a Congressional Township, six miles square?

A. That is right.

Q. As a matter of fact, the Village of Mazon is almost in the geographical center?

A. Practically.

Q. Do you know how many farming units there are in that territory and by farming units I mean the number of different farms that are operated in that township?

A. It just happens——

Q. Yes or no, do you know?

A. Yes, approximately.

Q. What is the number of those units?

[fol. 1726] A. About 130.

Q. Will you state where you acquired that information?

A. Through the conservation office.

Q. Do you mean the——

A. Soil Improvement Conservation Office.

Q. The branch of the United States Department of Agrituleure?

A. That is right.

Q. Which maintains a county office in Morris?

A. That is right.

Q. As a matter of fact, they have taken aerial maps of the Township, and they have them all marked out?

A. That is right.

Q. Have you made any computation based on the 700,000 bushels, average annual purchases made by your elevator, what that saving would be, and dividing it among these 130 units to show what the annual amount is per unit that they get more by reason of the water transportation?

A. Well, assuming that the elevator handles approximately 700,000 bushels of grain, and from innumerable examples that I have tested throughout the past five years, assuming that there is even an advantage of 2 cents per bushel, it would leave $10,000 per year in our territory, and assuming that the river has been open for five years, and we have $50,000 saving to our farmers in transportation costs, and taking the Conservation Office statement that [fol. 1727] there are approximately 130 farming units in our Township, it represents a saving to each individual farmer of approximately, each unit, I should say, instead of each farmer——

Q. Each unit may include landlord and tenant?

A. Yes, sir.

Mr. Brown: Off the record.

(Discussion outside the record.)

By Mr. Root:

Q. Will you complete the statement, for each unit?

A. Assuming that there would be a saving of $50,000 and there were 130 units, it means each unit would have been saved about $400 in transportation cost.

Q. Over the period of the last five years?

A. That is right.

Q. Does the Mazon Farmers Elevator have any association or connection with any commission firm or grain company?

A. Absolutely not.

Q. They are a member of the Allied group?

A. Yes.

Q. But they are not associated or connected with any commission firm in Chicago or elsewhere?

A. We do not have any association with them, affiliated or do not owe any commission company a single dime.

Q. In the past, has your company ever owed money to commission houses in Chicago?

[fol. 1728] A. Like about all private and——

Q. Have they, yes or no?

A. Yes.

Q. State the reason why it was necessary to borrow that money.

A. I am perfectly safe in saying that it wasn't a practice of any cooperative concern—all companies during the high-pressure movements would get scarce of money to pay their farmers instantly.

Q. Elaborate on that a little bit.

A. With the result that in the days that have gone by, I think practically every grain company more or less used certain commission companies as a sort of a bank for a temporary loan; and probably one of the outstanding reasons that we don't have occasion to do that any more is due to the fact that we move the corn from the farm to the river and the following morning the check that is sent over is in our office.

Mr. Root: I believe that is all I care to ask.

Exam. Taylor: Any questions by counsel for protestants? Cross-examine.

Cross-examination.

By Mr. Enoch:

Q. This isn't your first appearance in cases of this kind, is it?

A. No, sir.

Q. Have you been a witness for Mr. Belnap in other cases?

A. I came in for Mr. Belnap? Was I your witness?

[fol. 1729] Mr. Belnap: Yes.

The Witnes: Yes, I was. I didn't know who I was a witness for.

By Mr. Enoch:

Q. Do you remember what that case was about? Was that an issue similar to this?

A. I wouldn't have any idea. I was simply there as a farmer, just simply testifying——

Q. That was a case that was held down at Memphis, wasn't it?

A. That is right.

Q. And the rates out of Memphis into the Southeast were involved?

A. Yes, sir.

Q. And you took about the same position in that case that you just have taken here?

A. That is right.

Q. Now, will you tell me, if you can, what you paid to William Morris in dollars and cents for his 916 bushels of corn, and when I ask you that, I want you to ignore how you arrived at your bid, how you arrived at your price. Just tell me what you paid him. Have you got a record of what you paid him?

A. You know, I would have been very happy to substantiate my statement of what we paid this gentleman, but it happens that we, in our elevator, sell lumber, coal and all those kind of things, and it just happened this man owed us an account of $28 or $30; otherwise, I would have brought [fol. 1730] the cancelled check, would have verified my statement there.

Q. Now, you had another example there on the 7th?

A. Yes, sir.

Q. What was the name of that man?

A. The man on the 7th was Mr. Harry Grieff.

Q. Can you tell us what was actually paid to him?

A. On that day, we gave him 50 cents.

Q. 50 cents?

A. Yes.

By Mr. Root:

Q. 50 cents a bushel, you mean?

A. 50 cents a bushel.

By Mr. Enoch:

Q. Was that the bid to him?

A. That was what we paid him.

Q. You paid him 50 cents?

A. Yes.

Q. He got the full 50 cents, regardless of the kind of corn that he gave to you?

A. Well, he got it for No. 2 corn.

Q. What was his corn?

A. No. 2.

Q. And you are testifying now that this gentleman with whom you dealt on the 7th of December, 1939, got this price?

A. Yes, sir.

Q. 50 cents a bushel?

A. 50 cents.

[fol. 1731] Q. Now, on December 16th.

A. Yes, sir. December 16th, Mr. Chapin Weed—and by the way, his home is in Chicago; Plaza Place.

Q. Don't misunderstand me. I am not questioning your statement.

A. I know.

Q. But I want you to understand that I am not inquiring about the manner in which you arrived at the price or your bid. I want to know how much money per bushel each one of those men received on their corn.

A. On December 15th, we paid Mr. Weed, 52 cents.

By Mr. Root:

Q. What grade of corn was that?

A. All No. 2.

By Mr. Enoch:

Q. If he gave you No. 3 or No. 4, do you know whether you received No. 3 or No. 4 on a 52 cent bid?

A. Let me answer that just in a general way. All our corn is No. 2. We have had no exceptions.

By Mr. Root:

Q. You mean this year?

A. This year, yes.

By Mr. Enoch:

Q. In these last two instances, were these men also indebted to you?

A. They were, yes.

Mr. Enoch: That is all I have.

Mr. Root: Mr. Mellen, isn't it—oh, pardon me.

Mr. Cole: Go ahead.

Exam. Taylor: Mr. Bradford? Mr. Brown?

[fol. 1732] Mr. Brown: Yes.

By Mr. Brown:

Q. Mr. Mellen, isn't your company a member of the Illinois Grain Corporation?

A. Yes, sir.

Q. Would you say that quite generally, over your experience of the last two years or going back further than that if you care to, that when you had a lake rate, lake local rate of 5½ cents, that the difference in the net return to the farmer as against what he gets on shipments that you have when taken over to the river would be 2.4 a bushel?

A. I wouldn't say that.

Q. It wouldn't average that, you don't think?

A. I wouldn't say that.

Q. Of course, you have only cited one case and I don't care to have you cite any others, but I want to get about what the average would be to take any one season. Now, that is between what the farmer gets when he delivers to the river elevator and what he would get when he delivers to your elevator and you ship to Chicago on the lake local which, this year, is 5½ cents per hundred pounds. You made that contrast, didn't you?

A. Yes.

Mr. Root: Just a minute, let me correct you there. You say he delivers it. His testimony was he bought F. O. B. the farm. The farmer does not deliver in any case.

Mr. Brown: It is delivered to the river elevator.

[fol. 1733] Mr. Root: Yes, but I just want to get this straight. This man paid the transportation, which is an item of a cent a bushel.

Mr. Brown: Yes, it says here 50½ and 1 cent off, 49½, and the farmer gets 48½. That is what I am getting at, is what the difference is between what the farmer gets, according to Mr. Mellen's figures, under these two modes of transportation. I just want to get the general average, whether it is 2.4 or 2.3 or whatever it is.

The Witness: I wouldn't be able to say.

By Mr. Brown:

Q. Would it be as low as 2 cents on the average in 1939?

A. It would be purely a speculative answer on my part, Mr. Brown.

Q. Well, then, would you say this, that this illustration of

2.4 isn't representative of what happened in 1939 in the difference of prices to the farmer?

A. I tell you, Mr. Brown, let's answer in a back way, you might say. Every grain man seeks the highest price for his farmers' product. And the fact that the grain from the Mazon elevator, almost without exception moved to the river, proved that there was a profitable advantage to the farmer to move his grain to the river as against a 5½ cent lake local rate.

Q. Yes. I agree with you in that. I think that is true; that grain could be delivered to Chicago at cheaper cost and [fol. 1734] would result in a higher price to the farmer than if it went by rail at the lake local rate. What I have heard here about the discounts on the lake local rate—But if you can't say that this 2.4 that you used is typical, why did you use it, why do you bring it in here?

By Mr. Root:

Q. Do you understand what he is driving at here, Mr. Mellen?

A. I think I do, Mr. Root.

Mr. Root: Apparently the witness is confused. He has testified on this directly——

By Mr. Brown:

Q. You testified that the difference would be 2.4, using the two modes of transportation. Now, why do you bring that in here and show it to the Commission if you didn't mean that was what the farmer got more when he went by water than when he went by the lake local rate?

A. That is exactly what I did want the Commission to understand; in the cases I cited here, that is what I would like to show here.

Q. This one man?

A. Yes, sir, but as far as over a period of years that he did or didn't, I wouldn't care to go on the record to that effect.

Q. All right, then, we will pass that up. But on this particular case where these rates were used, you wouldn't say it is 2.4 more or any other amount that the farmer gets when he goes by barge than when he goes by rail?

[fol. 1735] A. The cases I am citing are specific cases. I say he did receive those advantages.

Q. All right, you use another illustration. I am not questioning whether 2.4 is right or wrong, but I want to know whether that is about the general average.

A. Yes, sir.

Q. We will pass that up. Now, you use another illustration that if the I. P. rate had been used on a bid that was delivered at Chicago, 53.1 cents per bushel——

By Mr. Root:

Q. What is the date of that?

A. December 1st.

By Mr. Brown:

Q. The net result to the farmer would have been 44.1 cents per bushel. Now, that was 4.4 per bushel less than you received in your first illustration?

A. That is right.

Q. So we get down to about this, that it is 2.4 when you use the lake local and it is about as much as 4.4 cents per bushel if the I. P. rate is charged?

A. Yes.

Q. Now, you shipped grain by rail to Chicago many times, haven't you?

A. Millions of bushels.

Q. Well, when you shipped grain to Chicago by rail and after you got your returns and got your money for it, did you know what happened to that grain?

[fol. 1736] A. Why, the assumption, of course, would be that somebody eventually is going to eat it up; get it out of the way.

Q. I presume so. But, do you know what happened to it in the way of transportation out of Chicago after you get your money?

A. I wouldn't have the slightest idea.

Q. Do you actually know today, when grain is delivered by you or for your account at the waterfront elevator in Morris, what happens to it there?

A. I wouldn't have the slightest idea.

Mr. Brown: That is all I have got.

Exam. Taylor: Any further cross examination? Anything on redirect?

Mr. Brown: Oh, just one more question, if you please; I overlooked this. It is a little past history.

By Mr. Brown:

Q. Mr. Mellen, you remember that you were present at a public hearing on September 1, 1939, before the Central Freight Association Executive Committee where we were discussing this very thing, the question of the cancellation of these reshipping rates on barge grain.

A. Tell me what happened. It seems very vague to me.

Q. Do you remember you were there?

A. If you tell me something that happened, it will probably bring it back to my mind.

Q. I believe that you got up and spoke a couple of times, and one time you said that the grain, even if these rates [fol. 1737] were cancelled, the grain would still go by barge to Chicago.

A. Did I say that, Mr. Brown?

Q. You did.

A. If I said it, that is the answer; I must have said it.

Q. I want to know if you——

A. Let's not delete it from the great statement I must have made.

Q. It wasn't a great statement. Let's get to this: You made that statement. You admit you made that statement, the grain would still move by barge even if those rates were cancelled out?

A. Don't you imagine I must have said something to qualify that, ahead or back of it? I certainly wouldn't make a bald statement like that, Mr. Brown.

Q. You did. I am asking you now if these reshipping rates are cancelled out from Chicago to the East, do you still think that grain will move by barge from Morris to Chicago that is grown in your vicinity?

A. Yes.

Exam. Taylor: Is that all? Anything on redirect?

Redirect examination.

By Mr. Root:

Q. Mr. Mellen, isn't it a common practice of country elevators to advance money on materials to your customers?

A. Quite definitely.

[fols. 1738-1740] Q. The deductions you made from the

customers were simply squaring up their accounts when they brought in the grain?

A. That is right.

Mr. Root: That is all.

Exam. Taylor: Is that all from this witness? Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Root: That is all the witnesses I have, your Honor.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: We will adjourn at this time until nine o'clock Monday morning, January 22, 1940.

(At 12:05 o'clock P. M., Saturday, January 20, 1940, adjournment taken to 9:00 o'clock A. M., Monday January 22, 1940.)

[fol. 1741]

Morrison Hotel,
Chicago, Illinois,
Monday, January 22, 1940.

Before R. G. Taylor, Examiner

Hearing resumed at 9:00 o'clock a. m.

Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right, gentlemen, come to order. Mr. Macaulay, will you put on your first witness.

Mr. Macaulay: Mr. Finnegan. Will you distribute your——

Exam. Taylor: Do you have some exhibits?

Mr. Macaulay: No, just a statement.

JAMES F. FINNEGAN, was sworn and testified as follows:

Direct examination.

By Mr. Macaulay:

Q. Will you state your name?

A. My name is James F. Finnegan.

Q. Where do you reside?

A. I reside in Morris, Illinois.

Q. Are you in the grain business?

A. I am the president and operator of the Finnegan Grain Corporation and of the Finnegan Elevator Company.

Exam. Taylor: Is that incorporated?

[fol. 1742] Mr. Macaulay: The Finnegan Grain Corporation.

By Mr. Macaulay:

Q. Where are you engaged in business?

A. In Patonville, Illinois, and in Morris, Illinois.

Q. And what is your previous experience in the grain business?

A. Well, I was in the grain business with my dad, a little place by the name of Blair, east of Dwight, since I was a boy. I was in business for myself at Wauponsee Station and I have been in business in Morris five and a half, six years on the river.

Q. Do you wish to make a statement for the record?

A. I do. In 1933 when it became apparent that the Illinois Waterway would soon be completed for navigation, I began the planning for the construction of a river elevator and in 1934 I completed the construction of my river elevator on the south bank of the Illinois River near the unincorporated village of Patonville across the river from Morris. After I had finished construction, the Farmers National Grain Corporation started to build a river elevator on the north bank of the river in the city of Morris. This elevator is now sub-leased to the Cooperative Allied Grain Dealers Corporation. My river elevator has a capacity of between 20,000 and 25,000 bushels. I operate as an independent grain dealer. None of the stock of either of my companies is owned either directly or indirectly by any other grain dealer or any commission man.

There was no established barge service on the river at [fol. 1743] the time I commenced the construction of my elevator. However, shortly after I completed construction the Federal Barge Lines provided a service both to Chicago and to the South and a Captain Black started an independent barge operation. As I recall it the Federal made a charge to Chicago of 4 cents per hundred which charge has since been raised to 6½ cents per hundred which is higher than the rates charged now by other barge line operators.

Because of the volume of grain necessary to fill a barge as compared with a freight car it was apparent that I couldn't rely on the old established practice of having grain brought to the elevator by wagon. If the elevator was to succeed it would be necessary to have a large volume and this required that the handling of grain from the farm would have to be revolutionized around Morris. Instead of having the grain shelled by the farm ring and taken by wagon to the local elevator and then transported to the river, I established the practice around Morris with the local elevator operator to buy the grain on the farm with weights and grades to be determined by my elevator at Morris. Either the local elevator operator or I would then arrange for a power sheller and trucks to be sent to the farm. The grain would then be brought direct to my river elevator where it would be weighed and graded and paid for. The farmer was relieved of a great amount of work, the local elevator operator was able to make a charge for [fol. 1744] his service without the trouble and expense of running the grain through his house, or financing the grain and was relieved of some speculation in finding a market for the grain. He was given an additional competitive market which was nearer home.

River elevator sites are not plentiful. It is necessary to have the elevator located on ground that is well above the high water mark and is accessible to the hard roads. The site where my river elevator now stands is on the stub end of a road which ends at the Illinois River and is on fairly high ground and has no rail connection and necessarily therefore has no through rail rate. The nearest railroad on my side of the river is the Santa Fe which is about ten miles south through Mazon, Illinois. At the time the site was selected, there was no apparent need for a rail connection because of the then provisions of the rail tariffs relative to grain arriving in Chicago by water and I was assured that the grain shipped by me by barge to Chicago would not be discounted by reason thereof.

When the Morris Grain and Seed Company went out of business in 1938 I was asked to lease its two elevators, one of which is located a few minutes north of Morris without any rail connection and the other is located at Morris, Illinois on the Rock Island. This lease is on a year to year basis. In 1939 in order to assist in the storing of government loan grain, I leased an elevator at Central, Illinois,

[fol. 1745] which does not have any rail connection. This lease is also on a year to year basis.

Most of my grain is now shipped over the Mechling Barge Lines. Neither I nor the Finnegan Grain Corporation or anyone associated or related to me or my companies have any interest whatever in the Mechling Barge Line or any barges or any towboats. I am entirely dependent on the various river transportation companies for the handling of my grain. I have no contract or understanding whatsoever with any barge line for their exclusive service or for service at a lower cost to me than to others.

The countryside around Morris produces an excess mostly of corn, and that is why my greatest volume of grain handled is corn. An increasingly large amount of soybeans are being produced in this area and are being handled by me. There is also a quantity of oats and wheat. I will quote prices and make a market for all grains.

Substantially all grain I buy is bought through the local country elevator.

By Exam. Taylor:

Q. Just a minute. Have you got an extra copy of that?

A. I have.

Q. Will you give it to Mr. Enoch so he can follow it?

A. Yes, sir. In this way I can secure a larger volume than would be possible if I bought direct from the farmer. [fol. 1746] The elevator operator is acquainted with the farmers and farm owners of his community and is better able than I am to know whether there are any liens or claims against the grain. By doing this I am able to deal directly with a relatively few persons which would not be the case if I dealt directly with the farmer. I need the local elevator operator and he needs me. There are a few instances where farmers have a large volume of grain and I buy it direct but these are rare. Other instances where I buy direct are where all the local elevators in a town are members and stockholders of Cooperative Allied Grain Corporation and do not sell me what I think a fair amount of grain, or where a particular elevator or elevators are taking too long a margin for themselves or where they do not accept any river bids even though the river bid is considerably higher than the rail bids, thereby not giving the farmer as much as he should be getting. However, the local

elevator operator need never fear that I will put him out of business if he will but sell me a fair amount of the grain from his territory if my price is as high as he can obtain elsewhere.

I firmly believe that the river elevators have enabled the local elevators to continue in business with less overhead. Before I commenced business in Patonville an increasingly large amount of grain was being bought in their territories by truckers at prices higher than the rail elevators could pay and was being trucked directly to Chicago, or to pro- [fol. 1747] cessors. The operators were facing ruin when the river market was opened to them. The experience of Mr. Barclay from Wing, Illinois who testified at the hearing before adjournment bears this out.

My grain is sold to arrive in Chicago when in my judgment the premiums are as high as they will go or is hedged and sold at the market upon arrival and unloading at which time the hedge is removed. I pay the cost of transportation, weighing, grading and trimming amounting to about 2¼ cents per bushel. While I now sell substantially all of my grain to the Norris Grain Company, I am under no agreement or obligation to do so. If I can obtain a better price from anyone else in Chicago, I would be able to sell to them. In spite of the fact that the Norris Grain Company is the actual buyer of the grain, I am obliged to pay to it ½ cent per bushel as commission because of the rules of the Chicago Board of Trade which has a virtual monopoly of the grain business in Chicago.

By reason of the highly competitive condition between the Cooperative Allied Grain Dealers Corporation and myself and previously between the Farmers National and myself grain is handled by the river houses on a narrow margin of profit with the result that the producer has received upwards from 2 cents per bushel more for his grain than under the old system. In addition to this the farmer has been relieved of the arduous job of bringing his grain to market.

The price of grain in the Chicago market depends on the [fol. 1748] supply and demand at the market. The more grain in the market to meet a demand the lower the price. We are in competition in the Chicago market with grain arriving by lake from lake points and from foreign countries as well as grain arriving via the Illinois Waterway from Kansas City. A reference to Exhibit 19 prepared by

the Chicago Board of Trade clearly shows the amounts of grain arriving via lake at the Chicago market. It doesn't show the amount of grain arriving from Kansas City but undoubtedly there is a substantial amount depending on navigation conditions.

It is a discrimination against me if the grain that arrives in Chicago via lake or from Kansas City via the waterway past my elevator at Patonville is accorded reshipping rates while the grain which is shipped by me via barge is not permitted such rates. Naturally, the grain which can comply with the requirements of the Board of Trade regarding transit to Eastern Trunk Line and CFA territory will be paid the best price. That grain without reshipping privileges is prejudiced in the Chicago market is plainly seen from the spread between I.P. billing and lake billing. This spread will be greater if a large amount of grain arrives in the market which has no billing.

In my opinion it is in the best interests of most all concerned that the amendments to the tariffs be cancelled for the following reasons:

[fol. 174a] By Exam. Taylor:

Q. Just a minute, Mr. Finnegan. You referred to I. P. billing and lake billing, designating billing coming off from the boats operating on lakes on what has been termed the lake local?

A. What we call the lake local, it is not the proper name for it but the grain men use it. I don't know what the proper name for it is.

Q. It is understood here as lake local?

A. Yes, sir.

Exam. Taylor: Proceed.

Mr. Enoch: Just a moment. Now, if the Examiner please, I don't understand that Mr. Finnegan is qualified as an expert in any capacity other than perhaps in the merchandising of grain, and apparently, though I haven't had an opportunity to read this statement, he is starting out now to argue the propriety of the main issue in this case. In other words, he says the Commission should take certain action for the following reasons. He is going on to read these reasons, 1, 2, 3, 4, 5. That clearly is the subject matter of briefs.

Mr. Macaulay: He has expressed an opinion as a grain merchant of conisderable experience, and I believe his opinion is something which can't be expressed in briefs, but should be expressed here.

Exam. Taylor: We will accept it as a statement of his position.

[fol. 1750] Mr. Macaulay: Yes.

The Witness: The amendments are confusing and probably will not procure the results which the railroads would like apparently to obtain. Under the amendments reshipping rates are granted to grain arriving by lake carrier vessels. A lake carrier vessel can be interpreted to mean any vessel which arrives at the lake dock points from the lake. The South Chicago elevators may be reached either via the Sag Canal or via the Chicago River through the lock into the lake and then southeasterly to South Chicago, a distance of about 15 miles.

The course the Federal Barge Lines now follows: So I will send my barge to South Chicago via the Chicago River and Lake Michigan. After my barge of grain has had the scum and the smell from its trip up the Illinois Waterway washed off of it by its trip through the clear fresh waters of Lake Michigan it will then be a lake carrier vessel and has shown its seaworthiness in the treacherous waters of Lake Michigan. Having arrived fresh as a daisy and having demonstrated that it is worthy and well qualified as a lake carrier vessel, its cargo receives the blessing of the Eastern rails and is awarded a preferential rate of 26 cents per hundred to New York while those barges which take the shorter route down the Sag Canal are so offensive to the nostrils of the Eastern roads that their cargoes are punished by being forced to pay 34½ cents per hundred for the same trip.

[fol. 1751] If it is desirable to ship grain to the Santa Fe elevator on the Chicago River, I will reverse the process by first sending my barge through the Sag Canal into Lake Michigan northwesterly through the locks at the mouth of the Chicago River and down the Chicago River to the elevator. The additional cost necessary for this procedure will be well justified because I will then be accorded the same treatment on the grain which I bring to Chicago from the farms of Illinois as is anticipated to be given to the grain which is brought to Chicago from the farms adjacent

to the Great Lakes including the farms in Canada and from the farms in Argentine and the other countries mentioned in the Chicago Board of Trade's Exhibit 19 and from the farms adjacent to Kansas City. There being no provision in the amendments requiring a prior rail haul before grain arriving by lake is accorded reshipping rates, it is quite logical that this procedure complies with the amendments.

Now, then, we come to the grain arriving from Kansas City, Missouri, and I want to stress the discrimination against me on this grain, as it is so plain that anyone whether they know anything about the grain or railroad business or not, can see it. We will start with a Federal Barge loading at Kansas City with 12,000 bushels of corn, for example. We will say that three kinds of billings into Kansas City will be used on this shipment via Federal Barge: 4,000 bushels of the most preferential billing to [fol. 1752] the Kansas City grain merchandiser to ship east which he will hate to cancel out to put on a barge as he has paid a premium for the grain when he bought it. 4,000 bushels of local or short haul billing for which he did not pay as much premium and 4,000 bushels of truck grain which he bought at a discount. In the meantime I had a Federal barge with 12,000 bushels of corn loaded at Patonville and the tow-boat from Kansas City towing the barge of corn from there stops to pick up my barge of corn which it ties alongside, and ties to the barge from Kansas City, they both go to the same elevator to unload and they both grade No. 2 yellow. They are both unloaded the same day. They both go into the same bin at the elevator in Chicago. So far the 4,000 bushels of no billing grain from Kansas City and my grain are absolutely alike. I would have used all no billing grain in the Kansas City barge in my example but I want to bring out the results back in Kansas, Missouri and Iowa to the farmer there and our farmer in Illinois that cannot ship via river.

Now, then, as far as reshipping from Chicago is concerned under the new tariff, both barges or the 24,000 bushels are identically alike as the new tariff does not give the 8,000 bushels of rail corn any preference over the 4,000 bushels of truck corn that came from Kansas City, but when the buyer of my barge of corn wants to sell it to the East he must pay 4¾ per bushel more freight on it than

he does on the barge he bought fraom Kansas City. He can't eat the barge of corn he bought from me, so the next [fol. 1753] time I have a barge of corn to sell and Kansas City has a barge of corn to sell it is easy to see whose barge he will buy. If he buys mine he will discount me the 4¾ cents per bushel that he has to pay the Eastern line as extra freight.

Now mind you, these two barges moved up the Illinois Waterway, the one from Kansas City, moving 332 miles in it, mine moving 68 miles in it. The farmers from our state which spent $20,000,000 on this waterway takes a licking of 4¾ cents on this grain. If that isn't discrimination I don't know what is but it is even worse than what has been shown here so far. When the Kansas City grain merchandiser had to cancel out rail billing to fill this barge, he would get an idea that that was no go so he would buy enough no billing corn for the next barge. He can buy it, I suppose, at as much discount as Chicago does under the good rail billing. I think the discount has been brought out in this hearing. This would enable him to go into Nebraska, Iowa and Kansas and buy corn and ship it to Chicago via river.

Our worthy opponents in this case have been trying to show that if our corn from Illinois comes in by river and has good billing that they will have so much corn in Chicago that it will depress the market so that the Illinois farmer that cannot use the river to ship his grain will not get as good a price as he would if our corn via river didn't [fol. 1754] have billing. Now then, if the farmers from Kansas, Missouri, Iowa and Nebraska that are within 100 miles to possibly 150 miles of Kansas City can ship their corn to Chicago via water and get billing I wonder if the effect wouldn't be the same on our Illinois farmer that cannot ship via river, or if their bushels aren't as big as our Illinois river bushels. I cannot see why the farmers of the state that spent the most money on its waterways should have to suffer to the extent that they will.

Apparently preferential or reshipping rates over local rates have been accorded grain arriving by barge at Chicago for a long time. I have been told that preferential rates were accorded arriving by barge at Chicago via the old I & M Canal before the competition from the railroads, as testified to by Judge Hayes, put the canal out of busi-

ness. If I can verify this to be a fact I would like to have an opportunity within ten days from the conclusion of this hearing to introduce an exhibit setting forth my findings.

By Mr. Brown:

Q. Now, just a moment there. Why do you want ten days to develop something that you haven't found out up until now?

A. I heard about this about four days ago, Jack, and where I saw this tariff—I haven't had time to go and get it.

Q. All right, is that tariff in existence now?

A. I saw the tariff about three years ago.

Q. You saw the tariff about three years ago?

[fol. 1755] A. I did.

Q. Was it in effect then?

A. Well, now, I can't answer that.

Q. What I want to know, did you see an old tariff that was in effect thirty years ago and has been dead thirty years ago?

A. I don't know how long it has been dead. I just remember three years ago seeing a tariff where the I & M Canal grain had transi. and I saw it in Springfield.

Q. Had transit at Chicago?

A. That is right.

Mr. Macaulay: Your Honor, he said if he can find it, he wants to have an exhibit introduced. If he can't necessarily his statement here carries no weight. I think that is fair.

Mr. Brown: Yes, but Mr. Examiner I want to know when this grain moved via the I & M Canal which had a certain transit privilege he is speaking of; I mean, was it 1910, 1920, 1930 or 1940, that is what I want to know.

Mr. Root: The record on that is quite clear, Mr. Brown. The last load out of Morris is 1908.

Mr. Brown: What has that got to do with this case?

Mr. Root: He referred to Judge Hayes' testimony and your question has been answered already.

Mr. Cole: Mr. Examiner, I think it is well settled, the kind of material that a witness can put in later after the hearing. At a hearing, we have quite frequently seen [fol. 1756] instances where a witness comes across something that he shows to us at the hearing and asks permis-

sion to introduce later; but now I want to call attention to the character of the material that this witness is asking permission to put in later. You see, if we grant him the permission and he comes in later and places something in that we would like to see if it was here now——

Exam. Taylor: To cross examine him?

Mr. Cole: If it was here now, we would cross examine him, and if we give him permission to put it in in ten days, we would be helpless. I don't want to keep out any facts, but I do like to have the privilege of seeing things when they are talked about and not be placed in such a helpless position as I would be placed in if the man was given ten days' time to put in something of which we know nothing about.

Exam. Taylor: Mr. Macaulay, I believe you recognize the opponents would not have the opportunity to cross examine him.

Mr. Macaulay: Yes, sir, I appreciate that and we would incorporate nothing but actual facts.

Exam. Taylor: In view of the objection to it, I cannot allow it.

Mr. Macaulay: Proceed.

The Witness: Barge grain was accorded these rates since the completion of the Illinois Waterway which was more than five years ago. Practices have grown up around it, large investments have been made not only by me but by [fol. 1757] many others. The railroads having encouraged this development and these investments, should not be allowed at this late date to change their minds. To allow the railroads to destroy that which they have encouraged to be built is manifestly unfair.

The benefits to the farmers of the Illinois Valley are definite and here again the railroads, having recognized a practice for a long period of time which has resulted in a definite benefit to a large number of farmers, should not be permitted to deprive the farmers of this benefit. Neither should Mr. Bradford be heard to complain that the Indianapolis Board of Trade is not able to buy as much corn as previously because the farmer is paid too much for his grain, nor the Staley Manufacturing Company of Decatur, Illinois for the same reason, nor the General Foods Corporation because it is unable to buy corn for its Kankakee plant except at a premium over the old basis of Chicago

price less the rail charges to Chicago; nor the Chicago Board of Trade because certain of its members as testified to by Mr. Brennan are being hurt. It has been the public policy of the United States to do everything possible to help the American farmer and the selfish interests of monopolies and big business should not be heard to complain that the farmer gets more for his grain than he otherwise would.

As stated before the reshipping rates on barge grain are a benefit to the country elevator operator who is in the territory adjacent to the waterway. True, there may be [fol. 1758] some who are not willing to recognize progress and adapt themselves to it but this has always been true as a matter of history in the case of every new invention or changing condition.

The Chicago market is benefited. Mr. Bradford and Mr. Burwell established that fact. Undoubtedly, if grain doesn't have reshipping rates, a part at least of that which would otherwise go to the Chicago market will find its way to other markets either via river or via lake. Grain sold in the Chicago market nets the members a commission on each bushel sold. Barge grain having reshipping rates makes a larger available supply to meet the requirements of the rules of the Board of Trade regarding contract grain which is sold to Chicago is generally hedged in Chicago, which might not be the case if the grain is sold elsewhere.

There can be no doubt but that grain that carries reshipping rates will more likely be shipped by rail to the East instead of via lake to the East making for greater revenue for Eastern roads. It is undoubtedly true that one of the reasons the Eastern railroads recognized grain arriving by barge as being entitled under the tariffs to reshipping rates was due to the competition which they faced with the boats plying the Great Lakes from Chicago to Buffalo and other Eastern points. Having applied the reduced rates to the carriage of barge grain from Chicago to the East in order to meet the competition at Chicago of the lake boats from [fol. 1759] Chicago to the East, it would be a violation of paragraph 2 of section 4 of the transportation act to permit the Eastern roads to increase the rates on barge grain except upon changed conditions, none of which have been shown to exist as would justify such an increase.

Most of the grain arriving in Chicago is placed in elevators and later reshipped to consumers in different parts of the country. The service of the Eastern railroad in handling the grain from the elevator to the East is the same whether the grain is placed in the elevator from a freight car on which the full rate is charged or on which the intrastate rate has been charged or from a barge or from a vessel which has arrived via lake. It is a discrimination to charge for like services one rate on grain arriving by lake and another on grain arriving by barge. There is a longer rail haul on grain bought in Chicago by processors than when that grain is bought by the processors in the countryside around its plant and either trucked or short-hauled to the plant.

Mr. Enoch: I don't understand that.

Mr. Macaulay: I think his explanation here will cover that, Mr. Enoch.

The Witness: A good example of this is found in the case of General Foods Corporation which is represented in this investigation. This company was active in the hearings before the Central Freight Association and protested that it ordinarily was unable to buy corn from the surrounding [fol. 1760] territory except at a price higher than the Chicago price less the rail. In other words, it wants to buy on the Chicago basis less the rail——

Mr. Enoch: I object to a reference of that kind, because it is quite obvious that the witness hasn't said everything that that man over before the Central Freight Association said, which would undoubtedly have clarified the statement just made.

Exam. Taylor: Can you bring that out on cross examination?

Mr. Enoch: All right.

The Witness: I think so. In other words, it wants to buy on the Chicago basis less the rail charge but to save for itself and the rail charge. Shortly after the Central Freight Association announced its decision in favor of the amendments,— I mean the amendments we are talking of now, on these reshipping rates—the New York Central filed with the Interstate Commerce Commission its supplement #39 to ICC-LS No. 1939 providing a rate from Kankakee, Illinois, locally to Battle Creek, Michigan of 7 cents per hundred on corn grits. This clearly shows the efforts

of this large processor to deprive the farmer of the benefits of the waterway so that this processor, which built its plant at Kankakee after there was a barge movement on the river could buy corn at a saving to it of substantially all of the rail cost to Chicago and then send it locally to its finishing plant in Battle Creek at an absurdly low rate.

Maybe it isn't proper for me to try to protect the East-
[fol. 1761] ern roads from the pressure which must have been brought on it from this big shipper. The discrimination of the reshipping rates on barge grain at this late date would give an undue and unreasonable preference to General Foods Corporation and other processors in violation of one of the principal objects of the Interstate Commerce Act in addition to depriving the rails of much needed revenues. The elimination of reshipping rates from barge grain will undoubtedly increase the volume of grain which is trucked to Chicago which grain will then be transported East by lake with the result that both Eastern and Western roads will be deprived of a rail haul and the revenues resulting therefrom.

The elimination as to some water-borne grain and retention as to other water-borne grain will result in a gross and unfair discrimination and advantage over not only the Illinois Valley farmer but also as to some water carriers. I understand that water carriers are not subject to the control of the Interstate Commerce Commission and therefore no matter how well conducted a water carrier may be it is still unregulated. A vessel arriving by lake is no more regulated than one arriving by river. The Federal Barge Line should be no more sanctified in its operation in bringing grain from Kansas City, Missouri, than it is when the same tow picks up a barge from my elevator at Patonville, Illinois under its published and uniform rates and takes it to Chicago. The Federal Barge Line is not regulated in
[fol. 1762] one operation and unregulated in another. Water-borne traffic arriving in Chicago is no more unholy than water-borne traffic arriving in Buffalo, where the Eastern roads eagerly seek the handling of the grain. Under the tariffs before amendment there was some semblance of protection to the local rate from Chicago in regard to traffic arriving either by rail or by boat but this protection is to be eliminated and it would then be possible for grain to be dumped into vessels at Wilmette, Illinois, or Whiting, Indiana, and brought to South Chicago, Illinois, for reship-

ment, which would result in a most unjust discrimination.

The Chicago Board of Trade would have the Commission believe that the issue is a discrimination between the treatment afforded intrastate billing, which Mr. Brennan states was sponsored by it, and barge billing. Suffice it to say that the controversy over the barge billing started the latter part of 1938 and involved a practice of long standing while the intrastate billing complained of did not come into existence until later, I believe in April, 1939, and is due to expire June 30, 1940—less than six months from now. If the Chicago Board of Trade was sincere it would be fighting to make the intrastate billing permanent and would be fighting to eliminate those provisions thereof which make it impossible for the grain which has an intrastate charge of 8½ cents or more to have reshipping privileges under the [fol. 1763] tariffs in question. If the intrastate rates are compensatory to the Western roads there seems to be no logical reason why a greater charge should be paid from these points and if it is necessary to reduce the through rates accordingly it should be done. It is not fair for the Board of Trade to shout discrimination when by doing so they uphold an initial rail charge against the producers around Morris, Illinois, for a sixty mile trip to Chicago of 9½ cents per hundred in order that the buyer can send the grain from 800 to 900 miles at a cost of 26 cents if to New York or 16 cents if to Baltimore for export.

It is contrary to the public policy as set forth in section 500 of the transportation act to permit the railroads to change the relationship with water-borne traffic which it has voluntarily assumed and thereby discourage water transportation on the Inland Waterways.

If this proposed tariff wall is thrown up around me, I probably will be put out of business because I have no rail connection with my river house. There are others who are like situated. If the rails desire to clarify the tariffs so that it is unnecessary to show the origin of the grain and the amount paid to the point of reshipment I would have no objection as long as they further provide that there shall be no discrimination between different types of water-borne traffic.

By Exam. Taylor:

Q. Is that all your statement?

A. Yes.

[fol. 1764] Exam. Taylor: Any questions, Mr. Macaulay?
Mr. Macaulay: Nothing more.
Exam. Taylor: Any questions by protestants?
Mr. Cole: I have some.
Exam. Taylor: Protestants.
Mr. Root: No, none by me.
Exam. Taylor: Cross examine. Mr. Cole.

Cross examination.

By Mr. Cole:

Q. Mr. Finnegan, in the early part of your direct testimony, you referred to the approximate time of the beginning of this transportation by water up the Illinois River. When was that, do you remember?

A. Oh, I think—I can't state definitely. I will state as closely as I can.

Q. That is it.

A. It was in July or August of 1934, as I recall it. I don't say that that is right.

Q. Well, was there any movement by water up the Illinois River, say, prior to 1933, in order that we establish a point behind which we need not concern ourselves?

A. I can't answer you that. I didn't live in Morris at that time.

Q. At one time, you said that the Federal Barge Lines rates were a good bit higher than the other river transportation companies. Do you know whether or not the Fed-
[fol. 1765] eral Barge Lines handle any of this grain under their higher rates?

A. I can't say as to that. I know they don't handle—they haven't handled any of mine under this higher rate for a year. However, the Federal Barge Line has handled considerable of my grain on those higher rates previous to this past year.

Q. Was that previous to the coming to the river of these additional transportation companies?

A. Yes, I would say so. Not entirely, however.

Q. Do you sell practically all of your grain to the Norris Grain Company?

A. I do.

Q. And where is the Norris Grain Company located where you sell it to them, here in Chicago?

A. I sell it to them here in Chicago.

Q. Do you know what they do with the grain after you sell it to them?

A. No, I don't. They unload it and that is all I know, what they do with it. They have to sell it.

Q. Yes, I understand that. Do you know where their areas are into which they try to get out their grain?

A. Well—no, I don't.

Q. You gave an illustration as to a barge moving up here from Kansas City and that tow picking up your barge at Patonville and carrying that to Chicago, and the fact that east of Chicago, the different grain taken from Kansas [fol. 1766] City and that taken from Patonville might secure different levels of proportional rates. Are you aware of the fact, Mr. Finnegan, that at the present time a car of grain may arrive at Chicago from Minneapolis and another car of the same kind of grain may arrive at Chicago from Kansas City, and those two cars be placed in the same train, and that train sent to Cleveland, Ohio, and the car of grain from Chicago to Cleveland, that arrived at Chicago from Kansas City, would actually pay 3 cents per hundredweight less from Chicago over to Cleveland than that car of grain that arrived there at Minneapolis?

A. I am aware of that, yes.

Q. You are aware of that?

A. Yes.

Q. Do you think that that situation presents the same foundation and the same illustration as you gave on the movement of this barge from Kansas City to Chicago?

A. No, I don't think it does. The barge movement from Kansas City in one instance is—it is not regulated but it has its rates—I am not answering that right. Just a minute.

Mr. Macaulay: It is a rather involved question.

The Witness: Will you read it, please.

(Question read.)

The Witness: I don't think it does, for this reason, Mr. Cole. There are two kinds or two classes of water carriers in this one tow, in this same tow that brings these two [fol. 1767] barges in, where that isn't so on your rail movement in to Chicago.

By Mr. Cole:

Q. What are the two classes of carriers there? I thought that your barge was hooked alongside of the barge from Kansas City?

A. That is right, it is in the same tow.

Q. Yes.

A. Therefore, it should have exactly the same privileges. But one is—I don't like to say unregulated, because no water carrier is regulated, but one accorded billing and the other is just accorded nothing. Now, whether there would be a difference in price—what I am trying to get at is consideration, does show some consideration, but it shows a 3 cent difference, but this barge movement in shows absolutely no consideration.

Q. Now, Mr. Finnegan, if you were confronted with this problem, do you think it would have any bearing upon that situation: If the grain comes from Kansas City to Chicago via the water line and if it comes from the Northwest, say Minneapolis to Chicago via a water line too, both kinds of grain will end up at Chicago and go into an elevator. They have both gotten to Chicago by water line, one on the barge from Kansas City and one on the lake vessels from the Northwest, and then those two cars of grain are shipped east of Chicago to Cleveland. The car that got in there via the lake steamer goes out to Cleveland at 3 cents a hundredweight higher than the car that got in there via barge from Kansas City. Would you say that that would [fol. 1768] be a proper rate set-up?

Mr. Macaulay: I don't believe that is a fact, is it? Is there any set of tariffs that we can refer to that you can base that on?

Mr. Cole: Yes. Exhibits 1 and 2 in this case.

Mr. Macaulay: And both cases result in a barge movement, one from Minneapolis, did I understand that?

Mr. Cole: No, one is handled from Minneapolis to Chicago via lake steamer.

Exam. Taylor: That is rail to perhaps Duluth or Superior?

Mr. Cole: Yes, via lake steamer to Chicago. The other one moves all barge up the waterway from Kansas City to Chicago. Both cars go into the elevator at Chicago.

Mr. Macaulay: And there is through billing from Minneapolis to Cleveland.

Mr. Cole: Oh, no.

Mr. Macaulay: By way of the lakes.

Mr. Cole: Oh, no, there is not any through billing. Both cars are reshipped from Chicago to Cleveland. Both cars are sold by the same house in Chicago which had bought the two cars and the fellow sold them to the same man in Cleveland and shipped them out.

Mr. Macaulay: And do they both leave Chicago on different rates?

Mr. Cole: They both move in the same train.

[fol. 1769] Mr. Macaulay: Under different rates from Chicago?

Mr. Cole: Yes, they go under different rates from Chicago.

The Witness: My answer to that, Mr. Cole, is this. Again, in both instances the railroads recognize it, they recognize both kinds of inbound water grain; where in our instance, via barge from Patonville, they don't recognize our inbound water borne grain. Both these types of inbound grain into Chicago from Kansas City via barge and from Minneapolis via lake are both recognized as a paid-in by the Eastern road.

By Mr. Cole:

Q. All right, now, Mr. Finnegan, but if the barge coming up from Kansas City, if that barge would secure the benefit of the lower proportional rate out of Chicago and if your barge is hooked up alongside of that barge from Kansas City, and if your barge thus is entitled to the same consideration as the barge from Kansas City, why shouldn't you, Mr. Finnegan, use the lower ex-TM proportional east of Chicago, than to require you to use the 3 cent higher proportional rate that is applicable on traffic that originated in the Northwest? Why should the carriers ask you to pay that 3 cent higher proportional? Shouldn't you get properly the lower proportional that is applicable on traffic from the Southwest territory?

A. It is impossible for me to take the lower rate under the present structure, out of here. The only rate I would have, if these supplements go into effect, the only rate I have out of here is the local rate. There is none other for me.

[fol. 1770] Q. I mean if these supplements do not go into effect and the situation continues as it is now, my question

was based upon that premise. Why should you pay the higher ex-Northwest proportional instead of getting the benefit of the ex-TM proportional out of Chicago?

A. Well, under one tariff I have to pay on the Northwest basis; under another one, I don't. I am not going to get involved in tariffs because I am not an expert in that line. On one of the outbound tariffs from Chicago, as it stands now, on barge grain I am forced to use Northwest. On the other tariff outbound, I am not forced to use it.

Q. Do you know what you have the privilege of using in that event, where you are not forced to use the Northwest billing?

A. Yes.

Q. What do you use there?

A. The trunk line tariff.

Q. The trunk line tariff, and under the trunk line tariff, what basis of proportional rate east of Chicago do you use?

A. Now, I will answer you that, and then I am not going to get any further involved in tariffs, because I don't have them here and I am not an expert on that line. 16 cents to Baltimore or 24 cents to New York. It is in that tariff at about those figures. Maybe it is half a cent out of line there, I don't know.

Q. Now, you stated at one place that the rail rate or the [fol. 1771] rail tariff situation encouraged the development of this transportation via the water line up to Chicago. Do I understand, Mr. Finnegan, that you are of the impression that the improvement of the Illinois Waterway and the institution of barge traffic on that waterway from these origins down along the waterway up to Chicago depended upon there being such a reshipping privilege out of Chicago as we are concerned with now?

A. It didn't depend on it, Mr. Cole, but if the railroads didn't want to handle that grain, they should have protested, in my estimation, when the waterway was opened, not after it has been operating five years in the great volume of business moving over it, great amounts of money invested in it.

Q. Are you assured in your own mind that this waterway development would have taken place in the same degree and the waterway traffic would have developed in the same way it has developed quite apart from the reshipping privileges which they might have had over rail rates at Chicago?

A. Definitely not. It wouldn't have reached nowhere near the proportions it has reached.

Q. Now, east of Chicago, Mr. Finnegan, are you familiar with the fact that there are two separate and distinct rate territories, one called CFA territory and one called Trunk Line territory?

A. I am.

Q. When I use either of those terms, do you know which [fol. 1772] territory I refer to?

A. I do.

Q. Now, when we are considering possible traffic from Chicago to Trunk Line territory, is there at the present time and has there been in existence for quite some number of years lake rates from Chicago to Buffalo which may be used in connection with ex-lake rates from Buffalo into Trunk Line territory?

A. That one I can't answer you.

Q. Is there?

A. I can't answer that; I don't know.

Q. You don't know whether——

A. No.

Q. —whether there are lake rates from Chicago to Buffalo? Do you know that part of it?

Mr. Macaulay: That is by rail or by lake?

By Mr. Cole:

Q. Lake rates from Chicago to Buffalo applicable on grain. Do you know whether there are such?

A. Out via the Great Lakes, you mean?

Q. What is that?

A. Via the Great Lakes, or via rail?

Q. A rate applicable on transportation via the lake, in a lake steamer that gets it at Chicago, floats it up Lake Michigan through that little areaway there, still in the lake steamer, and it is still floating down through Lake Erie and over to Buffalo where it ties up to a port and the boats un- [fol. 1773] loaded into an elevator at Buffalo. Do you know whether or not there are rates in effect via those lake steamers that will take the grain around that way?

A. I can't say whether there is any tariff on that or not. I know they rise and lower with the demand upon them. Now, whether they have a tariff, I can't tell you.

Q. Now, if that has caused you any trouble, we will eliminate this question of rates. Do you know whether there is a charge and that there is possible transportation via lake steamer from Chicago to Buffalo?

A. Yes.

Q. Are you at all familiar with the approximate range in costs of transportation via the lake from Chicago over to Buffalo?

A. Well, fairly well on a—not as to what the charges are, but on a competitive basis with the roads, just before the lakes closed, the charges were about the same via lake as via rail. You can't tell what the lake charges will be. They vary.

Q. Then I understand your testimony to be, Mr. Finnegan, that the charge for shipping the grain from Chicago over the lake, in a lake vessel from Chicago to Buffalo, is the same in amount as it costs to ship the grain from Chicago to Buffalo in a railroad car on the rail line, is that your testimony?

A. That is not my testimony. I said when navigation closed, they were very close. As I mentioned before, those lake rates fluctuate.

[fol. 1774] Q. Mr. Finnegan, of course I think we all understand that when the lake is a solid sheet of ice, it is impossible for you to ship the grain via lake under any conditions.

A. Mr. Cole, what I was getting at was not that it is possible to ship via lake now, but before navigation closed, a short time before navigation closed, the lake rate and the rail rate were very close to the same.

Q. Well, Mr. Finnegan——

A. Prior to that, prior to the War, the lake was cheaper than the rail.

Q. Wait a minute. When the lake is open to navigation and when the boats are plying the lake routes in numbers and volume, are you familiar with the approximate level of the charge for hauling a shipment of grain from Chicago to Buffalo via the lake lines?

A. Not familiar enough with it to go in as testimony.

Q. Are you familiar with the level of the ex-rail rates from Buffalo to various points in Trunk Line territory? Are you familiar with the level of those charges?

A. Not familiar enough to go in here no.

Q. All right. Mr. Finnegan, are you familiar with, then, the totals of the charges from Chicago to Buffalo lake, Buffalo to Trunk Line territory rail, in comparison with the level of the proportional rates that are now applicable on this grain that moves up to the Illinois Waterway to Chicago?

[fol. 1774a] A. I am not in a position to answer that without my tariffs.

Q. Then, Mr. Finnegan—that is all right. Then, Mr. Finnegan, if you are at the present time, if you are unable—listen to me carefully, please. If you, sitting there, cannot tell me the approximate relationship of the charges of handling grain over the lake to Buffalo, thence rail to the various destination points in Trunk Line territory, if you are unable to tell me how that bears up with the ex-proportionals from Chicago rail to the same destination territory, how is it possible for you to contend that the elimination of that ex-proportional rate from Chicago all-rail will affect your situation one single, solitary particle?

A. I say that I can't answer your question as I should here. But when I have my tariffs all before me and start figuring them out, then I could answer your question. You realize that I don't have them here, I have no notes on them.

Q. Well, Mr. Finnegan, will you agree with me to this extent: If—now, this is a hypothetical question that I am putting to you; I am saying "if."

A. Yes.

Q. If the rail rates from Chicago to Trunk Line destinations on the basis of the present proportional rates applicable to the ex-river traffic, if that basis is a higher cost than it would cost the grain shipper in Chicago to move his goods via lake to Buffalo and thence rail lines to the same [fol. 1775] destinations, how much bearing do the ex-rail proportionals out of Chicago have on the ability to move the stuff around?

Mr. Macaulay: May I have that read?

Exam. Taylor: Read the question.

(Question read.)

Mr. Macaulay: It sure is involved. Can you simplify that at all?

Mr. Cole: What?

The Witness: It is all right.

Mr. Macaulay: Maybe he can answer it.

The Witness: It is all right. In the first place, for four months of the year or whatever part of the year the lakes are froze, there is absolutely no way to move our ex-river grain out. The elevators here are full of Government corn, wheat. If they weren't, they would charge us a cent—over a cent a bushel a month to carry it; if they could carry it. Understand, they are so full, they can't carry it this winter.

If we were to carry it back home in our country elevators until the opening of navigation, we couldn't hedge it. If our grain don't have billing, there is no use hedging it. When we get in here in April with it, Minneapolis and Duluth are underselling us for the time being when navigation first opens. We can't compete with them. Our grain would have to stay back in the country until some time in May or June, but we would try to carry it for the winter months.

[fol. 1776] It would be a physical impossibility to carry it without drying facilities and so on, so during the three and a half or four months that the lakes are closed or during a period when lake vessels are hard to obtain, as they were last fall, our grain would be bought at whatever discount it took to move it on east via the local rates.

By Mr. Cole:

Q. Mr. Finnegan, when does corn ripen?

A. It ripens October, November.

Q. October and November?

A. Right.

Q. How long after the ripening and selling of corn is it that lake transportation over the lakes closes?

A. Oh, about the middle of December it closes; average from the 10th to the 15th, I guess.

Q. We have just covered now the situation involving Trunk Line destinations. And you are familiar with the two, CFA and Trunk Line?

A. Yes.

Q. Now, will you say that the necessity for the proportionals out of Chicago would be perhaps stronger for destinations in CFA that don't have the benefit of that lake route to Buffalo than the requirement would be to have the thing applicable to Trunk Line Territory?

A. Well, I think it should be applicable to both, if it is to one.

[fol. 1777] Q. You think that if it is applicable to either one, that there is no question but what it should be applicable to both in the same degree, is that right?

A. That is right.

Q. Is that your position?

A. That is right.

Q. But if we did, at any time, make a price on this river grain as between the two territories, which territory do you think should be treated with special consideration, CFA or Trunk Line territory; if there was a difference, now?

A. Oh, that is quite too big for me. Smart men try to handle that stuff. I can't answer that. That is way ahead of me.

Q. Well, Mr. Finegan, if you were informed that definitely there has already been made a distinct differentiation in the application of these rates, whether the territory was CFA or Trunk Line territory, would that surprise you to learn that?

A. Yes, it would.

Q. How could you figure that such a differentiation could possibly have come about?

A. There is only two reasons that the grain rates change, that I know of, and one is when the railroads want them changed, and one is when the Board of Trade wants them changed.

Q. Now, can you conceive of there being any—I am asking you now as a grain merchandiser in Chicago—can you conceive of there being any different foundation to found [fol. 1778] your method of construction of these things on or basic reason for making the application of the rates quite a bit different to CFA destinations west of Buffalo-Pittsburgh, than they make them when they are concerned with that territory east of Buffalo-Pittsburgh, Trunk Line?

Mr. Macaulay: Mr. Cole, isn't that really the railroad's case, to show the reasons for it, rather than this witness'?

The Witness: I will answer his question. Because you are in direct competition with the lakes all the way to the Atlantic Coast, where you are not in direct competition with the lakes into all CFA territory.

By Mr. Cole:

Q. I see, Mr. Finnegan. You then feel that there is a justifiable basic reason that we had under consideration

when we were considering those different situations, and that difference unquestionably had something to do with the possibility of that transportation over the lake?

A. Competition.

Q. Competition?

A. Has things to do with everything.

Q. Thank you. Are you sufficiently familiar with the details of these different tariffs to Trunk Line destinations and to CFA destinations so that I could with you go into those differences in construction of the tariffs from which we get a different basis to CFA than to Trunk Line?

A. No, Mr. Cole, I am afraid we would waste time.

[fol. 1779] Q. Thank you, I just wanted——

A. The only thing I know, is when they are here before me, I can figure them out for Finnegan. Outside of that, I don't know anything about it.

Mr. Cole: Thank you. That is all I have.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Finnegan, I was interested in the first part of your statement where you said that the local elevator need never have any fear from you, if he let you have a fair share of his grain business. Did you make that statement?

A. Right.

Q. Well, are you in a position to punish him if he doesn't let you have——

A. No.

Q. Wait a minute. What you think is fair?

A. No, I can't say that I am.

Q. What do you mean by he needn't fear you if he does what you conceive to be the right thing?

A. He needn't fear that I will make bids to the farmers in his territory, direct to the farmers.

Q. The fact of the matter is that you and the others engaged in similar lines of business, together with those whom you deal in Chicago, are in a position at a moment's notice to put the local elevator in your territory, with whom you are now dealing, out of business, is that a fact?

[fol. 1780] A. No, Mr. Enoch, it couldn't be done. I have given that a great deal of study, whether grain should be bought direct at the river, possibly more study than anyone else has given it; whether it should be bought direct or not.

And the extra cost of handling, the number of accounts that would have to be handled at the river, if it were bought direct, would more than justify the country elevator's position.

However, if you read farther, you will note that I say I buy in instances where the country elevator will not accept any river bid, even though it is higher, and thereby punishing the farmer in his territory by not paying him as much as he should.

Q. If the local elevator, in your judgment, is punishing the farmer, you and others in the same position you are in, are in a position also to punish the local elevator, are you not?

A. No.

Q. Then tell me what you meant when you said that, "If the local elevator does the right thing— " you are going to be the judge, now, whether it is the right thing or not— "then he needn't fear me." What do you mean by that?

A. He needn't fear that we will even give bids to farmers in his locality, even quote them a price on corn. We will tell them to go to him, get his price.

Q. I don't believe you recall what you said. You said that he needn't fear that you would put him out of business. [fol. 1781] A. That is correct. We couldn't put him out of business if we wanted to.

Q. Why should he ever fear it and why was it of sufficient importance to you to make it one of your features here?

A. It was sufficiently important to make it one of my features because I heard it mentioned by about five people in this hearing before adjournment.

Q. You didn't mean what you said then. You say here, "However, the local elevator operator need never fear that I will put him out of business if he will but sell me a fair amount of the grain from his territory if my price is as high as he can obtain elsewhere."

A. That meant if he will sell me a fair amount of his grain, if it is as high as he can obtain at Ottowa or at Allied or any of the other river houses.

Q. We understand that, but suppose he doesn't. Then he should fear you? Isn't that what you intended to say by that statement?

A. No, he should fear holding the price too low to the farmer, because if he does that, then the farmer will get a bid from my place.

Q. Why did you say he needn't fear you would put him out of business if it wasn't possible for you to put him out of business?

A. Well, it might be possible to make it miserable for him, [fol. 1782] but as far as putting him out of business, we couldn't do that.

Q. You want to say, then, that the little elevator needn't fear you are going to make it miserable, instead of putting him out of business?

A. That is really what I should have said, I suppose, but it is such a minor difference.

Q. The fact of the matter is that all of the local elevators are there at the will of yourself and the others engaged in your line of business?

A. No, I can't say that they are.

Q. What economic purpose, as far as handling of grain is concerned, do they serve?

A. That I tried to explain to you.

Q. As far as the physical handling of grain? If I didn't say "physical," I should have mentioned it.

A. It would be impossible for the river elevator to have enough clerks and keep its records out in three or four, five counties, mortgages, landlords and so on, and the landlord and tenant differences, it would be impossible to hire that help as cheaply in our office in Morris as the local country elevator can do it back home, where he knows everyone. He has no added expense to find out those things, where if we at Morris will do it, we must pay for it.

Q. Do you mean to tell the Interstate Comerce Commission that you couldn't handle—do you mean to tell the In- [fol. 1783] terstate Commerce Commission that you, as a business man, couldn't handle the clerical expense and bookkeeping at your local elevator or at your elevator based on 2 cents a bushel, the amount which you now allow to the country elevator?

A. The country elevator doesn't get 2 cents a bushel.

Q. How much does he get?

A. My customers are lucky if they get a cent.

Q. All right. That is a cent a bushel.

By Exam. Taylor:

Q. Wait a minute. By your customers do you mean——
A. My elevator customers.
Q. From whom you buy?
A. That is right.
Q. From whom you buy or through whom you buy?
A. Through whom I buy.

By Mr. Enoch:

Q. All right, a cent a bushel. You couldn't run an accounting and bookkeeping establishment at your elevator there with the expense of a cent a bushel?
A. It would require three or four men on the road also and I couldn't do it for less than a cent a bushel.
Q. Could you do it for a cent?
A. I imagine I could. That is the figure that I have placed it at that it would cost me if I had to do it.
Q. Where is the Finnegan Grain Corporation incorporated?
A. It is incorporated in Grundy County.
[fol. 1784] Q. In the state of Illinois?
A. Yes, sir.
Q. And the Finnegan Elevator Company.
A. The same.
Q. State of Illinois?
A. Yes, sir.
Q. Who owns the stock in Finnegan Grain Corporation?
A. My wife and I.
Q. Who else?
A. My brother.
Q. Any other stockholders?
A. No, sir.
Q. What are the assets of Finnegan Grain Corporation, physical assets?

Mr. Macaulay: I don't believe that was brought out on direct. Does he want a balance sheet or what is he after here?

By Mr. Enoch:

Q. Do you own your elevator there on the river?
A. The Finnegan Grain Corporation doesn't own the elevator on the river.

Q. Who owns the elevator?

A. The Finnegan Warehouse Company—the Finnegan Elevator Company, rather.

Q. Is that an Illinois corporation?

A. Right.

Q. Pardon me?

[fol. 1785] A. Yes.

Q. Who owns the stock of that?

A. The same people own that as own the stock in the Finnegan Grain Corporation.

Q. Any other stockholders?

A. No, sir.

Q. What are the physical assets of this third corporation other than the elevator and the land on which it is located?

A. That is all it has.

Q. Right there in Morris?

A. Yes.

Mr. Macaulay: What third one was that, Mr. Enoch?

By Mr. Enoch:

Q. Didn't you name a third corporation?

A. No, I didn't.

Q. Pardon me; the second corporation.

A. Right.

Q. The Finnegan——

A. That is the one that owns the elevator.

Q. Any mortgages out on that?

A. No, sir.

Q. Do you owe any money?

A. Yes, sir.

Q. To whom?

Mr. Macaulay: I object to that. I don't believe that has any bearing on it.

[fol. 1786] By Mr. Enoch:

Q. Do you owe any money to anybody in the grain business, any corporations?

A. Yes, sir.

Q. Any shippers along the Illinois River, any shippers of corn coming up the Illinois River?

A. No, I don't get you straight.

Mr. Macaulay: I object to that.

The Witness: Any receivers of corn?

By Mr. Enoch:

Q. Yes.

A. By "receiver" you don't mean a cash handler, is that correct?

Q. I am trying to avoid naming anyone's name. If you want me, I will name them; I will name them to you.

A. All right, sure.

Q. Do you owe any money to the Norris Grain Company?

A. Yes, sir.

Q. Continental?

A. No, sir.

Q. Any other grain company?

A. No, sir.

Q. Do you owe any money to the Quaker Oats Company?

A. No, sir.

Mr. Root: A little louder, Mr. Enoch, please. Maybe I am deaf.

By Mr. Enoch:

Q Do you owe any money to the Quaker Oats Company? [fol. 1787] A. I couldn't say. Perhaps they hauled grain yesterday.

Q. I am talking about business deals for money.

A. No, sir. If I do, it is a small amount for grain hauled yesterday.

Q. You handle all of their grain at Morris that comes up the river?

A. I buy all the Quaker Oats grain at Morris that comes up the river, yes, sir.

Q. All the corn grown in Illinois by — large, generally, now, is competitive at Chicago or the Eastern consuming points on a rail basis, isn't it; on a rail basis, now. I am emphasizing that.

Mr. Macaulay: May I have that read, please?

Exam. Taylor: Read the question.

(Question read.)

Mr. Macaulay: Which is that, Chicago or at the Eastern consuming points?

Mr. Enoch: Either one; both.

The Witness: Competitive on a rail basis?

By Mr. Enoch:

Q. Yes, I mean the farmer here at Rockford can compete with the farmer at Morris or any other point, generally speaking, in Illinois, one farmer, on a rail basis at Chicago or at Eastern consuming points?

A. It is competitive to the purchaser of corn at Chicago or in the East, but it is not competitive, as I would say, [fol. 1788] on an all-rail basis. Was that the question?

Q. Yes, that is right.

A. No, I wouldn't say that it is.

Q. Well, isn't it true that on a rail basis, this corn coming to Chicago from any point in Illinois has a common value at Chicago?

A. That is right.

[fol. 1788a] Q. And up until the time this waterway transportation came in, that was always the situation, wasn't it?

A. No, I believe that there were—before the waterway came into being, I believe there was rates established—you represent the Rock Island, do you not?

Q. Yes, but that doesn't make any difference.

A. Well, to meet truck competition it raised the price of corn to the farmer around Morris. It was competitive in the terminal markets; but the price back to the farmer varies greatly.

Q. Ordinarily, now, the man selling corn in Illinois, the farmer in Illinois selling his corn, the price to him paid by the consumer at Chicago or the merchandiser at Chicago, the price at Chicago is gauged quite largely by the freight costs, rail freight costs from origin to Chicago, isn't that right?

A. Now, in some parts of the state it is entirely that way.

Q. How was it at your point before the waterway came in and before the truck came in?

A. Then it was gauged by rail.

Q. All right.

A. Until prior to that time, it was by the I & M Canal.

Q. You don't know anything about the I & M Canal, do you?

A. No, I understand I don't. But I do know the record of it.

Q. What record do you know about it?

A. I know grain was moving by it instead of by the railroad.

Q. Do you know anything about Interstate Commerce [fol. 1789] Commission regulations prior to 1906?

A. No, sir, I don't know anything about it.

Q. There wasn't any business on the I & M Canal after that time?

A. Mr. Enoch, the I & M Canal has been discussed when it started operation and when it quit several times, and I think it is wasting time to go into that farther.

Q. Did I ask you anything about the I & M Canal?

A. You asked me about whether it was in 1906, whether it was operating and so forth.

Q. Didn't you make a statement first about the I & M Canal?

A. Yes, I said before the rail——

Q. If you don't think it is worth while to mention it, just don't bring it up and I will never ask you a thing about it.

A. All right.

Q. Isn't it a fact that you at Morris and others engaged in the same line of business that have available, because of your particular location, this waterway transportation are in business down there and using the waterways solely because of the spread between the cost of getting grain to Chicago from your locality by water and by rail?

A. Yes, sir.

Q. That is true, isn't it?

A. That is true.

Q. Now, would you have any objection to making the all-[fol. 1790] rail cost from Illinois points, including Morris to the East, on a level with the cost by water from Morris to Chicago, thence rail beyond?

A. Providing you lower the rail rates, I would have no objection.

Q. You would have no objection?

A. Providing you raise the water rates, I would.

Q. You say you would have no objection?

A. Providing you lower the rail rates and make them through yourself.

Mr. Root: May I have that question read.

Exam. Taylor: Read the question.

(Question read.)

Mr. Macaulay: I think he has answered that question.

Mr. Enoch: I don't think he has.
Mr. Macaulay: Read his answer.

(Answer read.)

Mr. Enoch: I am talking about lowering the rail rates.
The Witness: I have no objection.

By Mr. Enoch:

Q. Wouldn't that increase your competition down at Morris and put all of these men who have gone out of business down there back in competition with you?
A. Well, I think as long as the river flows, we keep the good will we have there, I don't think it would put us out of business, but it would hurt us terribly.
[fol. 1791] Q. It would hurt you?
A. Yes, it would.
Q. It would take away all the advantage you have got, wouldn't it?
A. Surely.
Q. So you do depend upon the spread between the rail cost and the water-rail cost, don't you?
A. Right.
Q. For a living?
A. Right.

Mr. Enoch: That is all.
Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen, come to order.
Mr. Enoch: Mr. Examiner, I had a note here I overlooked; two, in fact.
Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Finnegan, what do you know about grain coming up the river, Chicago grain from St. Louis or Kansas City?
A. Well, grain coming in from Kansas City——
Q. Do you know that there is any?
A. Oh, yes.
Q. Corn?
A. I can't swear as to whether there has been any corn, [fol. 1792] because the Missouri River hasn't been navigable very long, the service has been poor; but I under-

stand they are going to have better service starting next summer.

Q. Do you know of a single shipment of corn going to Chicago from either St. Louis or Kansas by water?

A. I can't point out any barge number.

Q. I am asking you, do you know of any?

A. No, I don't.

Q. Do you know of any other grain?

A. Yes.

Q. Of your own knowledge?

A. Yes.

Q. When?

A. Last summer.

Q. How much, do you know?

A. I can't tell you that.

Q. What was it?

A. Wheat.

Q. Wheat?

A. Yes.

Q. From where?

A. From Kansas City.

Q. You don't know how much?

A. No, sir.

Q. You don't know whether it is one barge?

[fol. 1793] A. No, sir.

Q. As a matter of fact—are you sure it was last summer?

A. Yes, sir.

Q. Are you personally or were one of your corporations indebted to any other grain house than the Morris Grain house?

A. Am I indebted to any other grain house?

Q. Yes, sir.

A. Yes, sir, I am indebted to M. L. Vehon.

Q. Lowell Hoit & Company?

A. No, sir.

Q. When you say you are indebted, you mean the Finnegan Grain Corporation?

A. No, sir.

Q. Or the Finnegan Elevator Corporation?

A. No, sir, neither one of them. I am not indebted to them; to M. L. Vehon.

Q. Are either one of these corporations indebted to you?

A. No, sir.

Mr. Enoch: That is all.
Exam. Taylor: Mr. Day.
Mr. Day: No questions.
Exam. Taylor: Any other questions by respondents? Mr. Brown.

By Mr. Brown:

Q. Mr. Finnegan, I understood you to say in answer to one of the latest questions of Mr. Enoch that you would [fol. 1794] be satisfied, or rather would have no objection if the through rail rate from Morris and that vicinity to the East was the same as the barge cost plus the reshipping rate?

Mr. Enoch: I said the charges were the same.
Mr. Brown: The charges?
The Witness: Read it, please.
Exam. Taylor: Read the question.

(Question read.)

The Witness: Barge cost plus the reshipping?

By Mr. Brown:

Q. If the through charges for the all-rail were the same as the combination charges, barge plus rail through Chicago?
A. Yes.
Q. You say it would hurt you?
A. It will hurt me. Providing the rail rates are lowered, I would be satisfied.
Q. Now, do you mean the rail rates up to Chicago lowered?

Mr. Macaulay: You said the through rate from Morris to destination.
Mr. Brown: That is what Mr. Enoch asked.
Mr. Macaulay: Yes.
Mr. Brown: And I am coming to the other leg of it.
Mr. Macaulay: Other end of it?
Mr. Brown: Yes.

By Mr. Brown:

Q. You said providing the rail rates are reduced. What [fol. 1795] rail rates?

A. I wouldn't care where you reduce the charges, so you make the charges equal. Now, understand, the charges.

Q. Yes.

A. I am loading—I am unloading the barges where you don't have to unload the cars.

Q .Transportation charges. The railroad has got nothing to do with the unloading of the cars, the barges.

A. Mr. Enoch brought in the point of charges.

Q. I will make it transportation charges.

A. Then that is different.

Q. Your answer would be different?

A. Yes, sir.

Q. You want the railroads to equalize any carload cost of unloading or loading barges that it does into and out of cars?

A. No, sir, they don't have to unload the cars, if they got a through rate from Morris into that territory. They will go straight through, they won't unload here.

Q. Oh, I see, you are technical. Do you mean to say that your answer would be different if the rail grain stopped in Chicago and was transited and then went on east?

A. In that case, if the rail grain is shipped in Chicago and is transited and goes on east, it is all right with me if the total rail charges that stop here and take transit from Morris and vicinity to the East are the same as the [fol. 1796] rail and the water charges from Morris to the East, with the same transit privilege here as the rail grain has.

By Mr. Cole:

Q. Water and rail charges?

A. Water and rail, that is right.

By Mr. Brown:

Q. Water first and then rail?

A. That is right.

Q. Now, if the rail movement up to Chicago thence lake was made the same as your charges, barge thence the lake, would you have any objection?

A. No, sir. Yes, sir, I would.

Q. Why?

Mr. Macaulay: That contemplates a trip from Morris to Chicago? You are still on that leg, aren't you, from Morris to Chicago?

Mr. Brown: No, sir.

Mr. Macaulay: Read the question, then.

By Mr. Brown:

Q. From Morris up to Chicago by rail, thence lake to the East, as against barge up to Chicago, from Morris to Chicago, thence lake; and I asked if that was satisfactory. First he said yes; now he says no. Now, I would like to know the reason.

A. I didn't want to say the reason because it is so—it is an eye for an eye. The railroads are trying to take from the water carriers and discriminate against them. Now, then, if you want to say it that way, it is an eye for [fol. 1797] an eye; where we have got all the water traffic discriminated against.

Q. You think, then, it would be all right for your grain to have part water haul to Chicago, thence another rail haul to the East, and it is perfectly all right with you if the through rail haul from Morris and vicinity, whether stopped at Chicago or not, to the East, is made exactly the same?

A. Right.

Q. All right, but when it comes to an all-water haul of your grain, barge to Chicago, thence lake, as against a rail haul from Morris to Chicago, thence lake, you think that ought to have the advantage?

A. Yes, sir.

Q. On what leg of that route—the two legs, one west of Chicago, and the other—what leg of that route do you think you ought to have the advantage on?

A. It wouldn't make any difference.

Q. It wouldn't make any difference?

A. No, sir.

Q. In other words, you would be satisfied if you got a lower rate via lake on your barge grain than the rail grain, is that it?

A. I don't care which way it is done. I don't care whether it is lower lake or lower river.

Q. But you don't want the all-water route to have as high a rate as the rail plus water?

[fol. 1798] A. No, I don't. As I said before it is merely an eye for an eye matter.

Q. Oh, yes, I know. Now, you made this statement, you were talking about the time you selected your site, 1934,

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solely on the river and has no rail connection. You said, "At the time the site was selected, there was no apparent need for a rail connection because of the then provisions of the rail tariffs relative to grain arriving in Chicago by water, and I was assured that the grain shipped by me by barge to Chicago would not be discounted by reason thereof."

Now, what assurance did you have and who assured you that it wouldn't?

A. One of the offices that assured me was your office. Whether it was Mr. Benson or you, I just can't remember. Rosenbaum Brothers, Norris Grain Company, M. L. Vehon, Stratton Grain Company, any one of the commission houses in Chicago, plus your office. Now, I don't say whether it was you or whether it was Mr. Benson; it has been so long ago I can't remember.

Q. Say it was me. Benson and I are the same, you know, when it comes to interpretation.

A. I know. It came out of your office.

Q. All right. Here were people who were not at all connected with the railroad, and as far as I know, were not connected with the barge corporation, and you accepted their assurance that you would not be disturbed in your then [fol. 1799] present situation under which, I understand you to say, you had the benefit of the reshipping rates east.

A. Oh, no; I was told by railroad men, too.

Q. That is what I want to get at. Who told you and assured you, now, that it wouldn't be removed?

A. They didn't assure me and I didn't say that I was assured it wouldn't be removed.

Q. You said it would not be discounted by reason thereof.

A. Right.

Q. What did you mean by that language?

A. They didn't say it wouldn't be removed.

Q. Then, what did you mean by saying this: "Would not be discounted by reason thereof"? By reason of what?

A. By reason of moving in by water.

Q. Oh. Then you did have some conversation with some railroad men who assured you that that wouldn't be discounted. Now, what do you think he meant when he said you wouldn't be discounted? In price, in the rate east, up to Chicago? In what way was the deal to occur?

A. It would occur out from Chicago, naturally.

Q. And you were assured that would not happen?

A. That is right.

Q. Do you know that under the law, the railroad -as to obey its tariffs?

A. Yes, I do.

[fol. 1800] Q. And has a right to change them at any time they see fit?

A. I understand that.

Q. You didn't have it in writing, this assurance in writing?

A. No, sir.

Q. Now, I understand that you were the pioneer in the water business from around Morris, having erected the first real sole water facility, is that right?

A. Yes, sir.

Q. Judge Hayes commended you for the integrity and Stick-to-itiveness and apparently indicated that you had a lot of trouble at first in getting grain through by barge. Was that because the farmers were a little shy or these country elevators didn't cooperate with you then as they did now?

A. No, sir, I had no trouble from the time my elevator started operating until the river froze up; I had trucks lined up there very day.

Q. Had all the business you could handle?

A. More than I could handle.

Q. At that time, I wondered why you said you were struggling so hard and now you are successful and all that, but did you then deal with the farmers direct?

A. On a larger scale, on a little larger scale than I do now.

Q. Now, were those farmers chiefly those within five or ten miles of Morris?

A. No, sir.

[fol. 1801] Q. Where were they located, some of them?

A. They were located mostly over around my home, which is ten miles east of Dwight, where I was in the grain business with my dad before I came to Morris, over in what is called Blair.

Q. Those fellows followed you around there?

A. And around Wauponsee, I was there for a while, and those fellows followed me. That was my first business, you might say.

Q. When you opened up, you took with you certain business that was in your home town, and that was augmented by farmers nearby?

A. Nearby my home town? Oh, I get what you mean.

Q. Farmers nearby your new place of business.

A. Nearby my new place of business I didn't induce them to come into my place. I didn't know them, and the grain nearer town, nearer to Morris from the start was bought through the elevators.

Q. Through the country elevators?

A. That is right.

Q. All right. Now, were those country elevators that you first dealt with, are any of them now stockholders in the Cooperative Allied Grain Dealers Association?

A. Yes, sir.

Q. And you still buy from them?

A. Yes, sir, most of them.

Q. And what you do not buy now from those people, you [fol. 1802] are buying from other country elevator operators that are not stockholders in the Allied?

A. Yes, sir. Now, don't get me wrong. I stated that I buy some grain from farmers, in rare instances, and I don't want to try to retract that statement.

Q. Do you have control of any trucks?

A. No, sir.

Q. You haven't any under lease?

A. No, sir.

Q. Are there any trucks that are subject to your call?

A. No, sir. Only when they are hungry and want work; they are there to get work.

Q. What kind of work do you give them, if you don't control them or don't need them?

A. Tell them, "Nothing doing today."

Q. Are there any days when you do have something for them to do?

A. Yes, sir.

Q. Now, what is the nature of that? Is it because the farmer wants you to tell him where he can get a truck to haul the grain in?

A. Occasionally. Most of the nature of the trucks with us is transferring grain from our three other elevators to the river elevator.

Q. Yes. Well, then you do take grain in at these three [fol. 1803] other elevators, I believe there was one of them on the rail, the one at Morris?

A. Yes, sir.

Q. You take that in from farmers, whoever wants to bring it over?

A. Yes, sir. No, not by everybody who wants to bring it over. It has to come through certain sources.

Q. It has to come from the same source that you get the business that is shipped to you direct?

A. Right.

Q. Now, these other two little elevators, who do you deal with in getting the grain to them?

A. Same source.

Q. But after it gets into those three offside elevators, you yourself pay the transportation over to the water house?

A. Right.

Q. But the grain has been paid for in those three houses, it has been paid for on the same basis as if it was delivered in the first place to your river house?

A. Yes, sir.

Q. Now, I understand that—have you improved your elevator since 1934 any?

A. Oh, yes.

Q. In capacity?

A. No, sir.

[fol. 1804] Q. Merely in the handling of it?

A. Mechanics.

Q. Yes, mechanics; faster house?

A. Yes, sir.

Q. Handle more?

A. Yes, sir.

Q. Now, how far out would you say is grain trucked to your elevator, irrespective of who handles it? The grain that comes to your elevator, how far out do you think they truck it?

A. 45 miles.

Q. Isn't that a greater distance than was trucked in 1934, aside from your home town boys, now?

A. Well, I can't say—1930—the first of the year we got some grain from Chenoa, and I think that is about as far as we go now?

Q. Genoa?

A. No, Chenoa.

Q. Oh, Chenoa, on the Alton. Now, I understand that all the grain that you buy on these bids that you give to these

country elevator operators is sold to Chicago CIF terms?

A. Yes, sir.

Q. How soon after that grain is delivered in the Chicago elevators do you get your pay, as a rule? Two or three days?

A. Yes. When it is unloaded and the weights come up to Joe Schmidt's office. I get paid that day.

[fol. 1805] Q. Now, who contracts for the carriage of the grain from Morris to these South Chicago elevators?

A. I do. I do not contract for them. I ask for a barge to be placed when I want to unload it, but I tell them this, to leave one there all the time.

Q. You have got a standing order for a barge to be left there as soon as the loaded barge gets out, is that right?

A. Right.

Q. Is there room for loading more than one barge at a time from your elevator?

A. No, sir.

Q. When that spot is empty, you have got orders to drop in another barge?

A. That is right.

Q. Continuous movement?

A. Yes, sir.

Q. Now, with the exception of the improvement in your handling facilities, I am to understand there has been practically no increase in your business from the very start? That from the very start in 1934 up until now, you are working just as fast and handling just as much grain as is possible for your facilities to handle, is that right?

A. That is right.

Q. How many hours a day do you work your elevator?

A Sometimes twenty-four.

[fol. 1806] Q. Do you have three shifts?

A. Three shifts and a half.

Q. Do you buy solely from these country elevators on the bids that you get from Chicago?

A. No, sir.

Q. Do you sometimes set your own price to these country elevator fellows?

A. Depending on my judgment as a grain merchandiser, yes.

Q. Now, you, in cross-examination by Mr. Cole, talked as though you paid sometimes the ex-Northwest rate and sometimes the TM rate and sometimes some other rate from Chi-

cago. As a matter of fact, do you yourself pay any freight rate from Chicago to the East?

A. No, I do not. I didn't mean it in the way that I paid it. I meant it for the men who bought my grain had to pay it.

Q. Now, you said that one difficulty in taking away the reshipping rates would be that you couldn't hedge in the Chicago market. Now, when you buy grain from these country elevators, say today, do you yourself hedge that in the Chicago market?

A. Yes, sir. I either hedge it or sell it.

Q. All right. Now, we will say now that you bought it——

A. Yes, sir.

Q. And you haven't sold it?

A. Yes, sir.

Q. And you hedge it?

[fol. 1807] A. Yes, sir.

Q. When do you take off your hedge?

A. When it arrives in Chicago.

Q. All right.

A. And is unloaded, so we know the bushels and grades to settle for.

Exam. Taylor: Mr. Brown, just a second. All right, Mr. Brown.

The Witness: Wait a minute, Jack, until I see where we were here.

Mr. Brown: We were about to hedge.

The Witness: I don't want to get twisted up.

Exam. Taylor: Read the last question and answer.

(Record read.)

By Mr. Brown:

Q. Well, since you have quite a continuous and regular operation, one barge load is taken away and another drops in, and presumably the interval is not great between the two loads out, is there really much necessity for your hedge and do you do much hedging?

A. Yes, I do quite a bit of hedging.

Q. Under what conditions?

A. I very often bring the grain in here and pay storage on it and hedge it; and I have over 200,000 of room, and

naturally I don't let that go to waste if, in my judgment, I can fill the space and hedge it and make a carrying charge on it.

[fol. 1808] Q. Now, I think you said that country elevator from whom you bought was lucky if he got a cent a bushel. How can you know how much he retains out of the bid that you made him for his services?

A. Oh, I know what is paying the farmer, and I know about what his trucking charge is to Morris. I keep in pretty close touch with it.

Q. In other words, you are after him all the time and you are trying to bear down his compensation?

A. No, sir.

Q. To a cent a bushel?

A. Oh, no. No, I don't care what he buys it for. All I want him to do is to sell it to me. I want to get it, that is all.

Q. You want him to get it for you and you want to buy it?

A. That is right.

Q. But you don't know how much he keeps for himself?

A. Other than what they tell me, and I have checked with the farmers, what a certain elevator is bidding them, and I find that practically all the time they are getting a cent a bushel and a great many times a half a cent a bushel. The Allied are pretty tough competitors.

Q. I would say so, too. Now, in view of this explanation of how you do business, I would understand, except in rare occasions, you have no direct commercial contact with the farmers in your community?

[fol. 1809] A. That is right, Jack.

Q. You said you didn't contract for the carriage, or I understood you to say you didn't contract for it, except that you had a standing order for a barge to be loaded?

A. That is right.

Q. When that barge is loaded, isn't it your usual practice to just tell them to take it to somewhere and make out a bill of lading?

A. No, sir, we make out a bill of lading at our office.

Q. Signed by the captain?

A. Sometimes, and sometimes sent to Joliet to be signed by Mechling; sometimes sent to Chicago to be signed by Mechling when he comes in here; to the receivers, to the man who is receiving that certian barge of grain. The

lading may be sent to him awaiting Mechling's arrival there to sign it.

By Exam. Taylor:

Q. But it is a Mechling bill of lading?
A. Right.

By Mr. Brown:

Q. In other words, you make out the billing documents to state to what elevator it is to go in Chicago, and I suppose you make an estimate of the weight, and so forth?
A. That is right.
Q. All right, now, do you put a freight rate on that bill of lading?
A. No, sir.
Q. You leave that open?
[fol. 1810] A. Yes, sir.
Q. Who pays the freight charges, the Mechling towing charges, we will say?
A. They are paid by the buyer of the grain.
Q. At Chicago?
A. That is right.
Q. Including the rental of barges, if there is any such thing?
A. That is right. I don't know how he gets them.

By Exam. Taylor:

Q. How he gets the barges?
A. That is right; whether they are rented or what they are.

By Mr. Brown:

Q. Now, Mr. Finnegan, in all your career as a grain man, or as a shipper, or a buyer, did you ever complain to the railroads because ex-lake grain had a reshipping rate from Chicago different or more than the local rate from Chicago?
A. No, Jack, I didn't.
Q. Would you be perfectly satisfied if the railroads east of Chicago, in the matter of freight rates on grain brought into Chicago by barge that you sell to Chicago, treated that

exactly the same as they do bulk grain arriving at Chicago by the Federal Barge Line?

The Witness: You will have to read that.

Exam. Taylor: Read that question, Miss Reporter.

(Question read.)

By Mr. Brown:

Q. Irrespective of the origin of the grain that the Federal Barge Line brings in. That is just the detail end of it. [fol. 1811] You needn't answer that part of it now.

A. Wait, I just don't understand here.

Q. Here is what I mean——

A. Break it down a little, Jack. I can't follow it.

Q. I want to make it perfectly clear. You ship grain by barge in bulk up to Chicago?

A. That is right.

Q. There may be 15, 18, 19,000 bushels in that barge?

A. Yes.

Q. It is bulk grain, corn, for instance.

A. All right.

Q. The railroads want to charge you a certain rate east of Chicago.

Exam. Taylor: Not charge him; charge that grain.

By Mr. Brown:

Q. Charge on that grain a certain rate east of Chicago?

A. That is right.

Q. It doesn't make any difference what it is. We will say it is 15 cents to a certain place, and then grain in bulk, it may be corn, it may be wheat or something else, is also brought into Chicago by the Federal Barge Line from some place other than Morris. Would you be perfectly satisfied if your grain is trucked just the same, in the matter of freight rates, as that grain that is brought in by the Federal Barge Line to Chicago is treated east of Chicago?

[fol. 1812] A. Oh, absolutely. Sure.

Q. We are talking about bulk grain now.

A. Yes, sir. Surely. I would have more competition on the river then to bring my grain in.

Q. When you order a barge, do you order it from Mechling, the same fellow who does the towing?

A. That is right.

Q. You don't care whose barge it is or where he gets it?
A. No.
Q. Do you recall, Mr. Finnegan, whether in the protest that was filed by you and also by your attorney, Mr. Macaulay, you said that it has been the practice of yourself to turn back to the farmers practically all of the savings, substantially all of the savings resulting from the use of the Illinois Waterway. Now, I understand from that you meant the difference between, say, what it costs by rail to get it up to Chicago and what it costs to get it up by barge, is that right?
A. That is right, Jack.

Mr. Brown: That is all.
Exam. Taylor: Mr. Oliphant, any questions? (No response.) Any further questions on cross examination? (No response.) Any on redirect?
Mr. Macaulay: Just about two.

Rirect examination.

By Mr. Macaulay:

Q. Will you trace a shipment of grain that you sell to [fol. 1813] Chicago; supposing that that grain goes to Eastern destinations.
A. Yes, sir. We load it at Patonville. We pay our barge charge—well, I guess our total charges are about two and one-fourth cents.

By Mr. Taylor:

Q. You pay that where?
A. We will pay our barge and charges for unloading there and handling the barge, which is about——
Q. Where do you pay that?
A. It is deducted from the grain here in Chicago. We load it at Patonville and bring it to Chicago and then that is deducted. And we will say this grain is going for export. They are selling quite a bit of export grain now. That 30,000 bushels of grain can be loaded in freight cars and shipped to Baltimore, and as I recall it, that takes a 16 cent rate from Chicago to Baltimore when it is gonig for export. If it were going for domestic to Philadelphia, it would take 24½ cent rate.

Is that what you wanted me to do, Macaulay? I didn't understand——

By Mr. Macaulay:

Q. I am interested in knowing what happened to the bill of lading after it is sent by you to the buyer. Do you know what he does with it?

A. No, he takes it down there to the Traffic and Transit Bureau, or Traffic Bureau and has it recorded, I understand.

[fol. 1814] Mr. Enoch: Now, we are going to get the record all confused. Mr. Finnegan doesn't know what this receiver at Chicago does.

Exam. Taylor: Let's see if he does.

By Mr. Macaulay:

Q. Do you know what he does with the bill of lading?

A. Yes, he records it with the Transit Bureau there in the Board of Trade.

Q. And what is the effect of that recording, as you understand it?

A. He is entitled, then, to that many tons of corn, to take reshipping rates from his elevator to the East, or to the CFA territory under the reshipping rates as they stand now in Tariff 245 and 535.

By Exam. Taylor:

Q. Now, Mr. Finnegan, you said he takes the bill of lading, the bill of lading that you make out on the Mechling Barge Line's bill of lading. You said that he takes that bill of lading or the freight bill and has it registered?

A. I am sorry; it is the freight bill, Mr. Examiner. I am sorry. It is the freight bill that he registers.

Br. Mr. Macaulay:

Q. You stated that the freight rate was paid by the buyer. Is that freight rate, in turn, deducted against the price that you are entitled to receive for the grain?

A. Yes, sir. As I told Mr. Bell, I sell it all CIF, Chicago.

By Exam. Taylor:

[fol. 1815] Q. Do you know who makes out the freight bill?

A. Mr. Mechling, I think, makes out the freight bill. I can't say as to that.

Q. You are not sure?
A. No, I am not.
Q. We want facts.
A. I can't state that well enough to be a fact; well enough to put it there at all.

Mr. Macaulay: That is all.
Exam. Taylor: Does that bring up any further questions?
Mr. Belnap: May I ask a question, please?
Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. Mr. Finnegan, you answered Mr. Brown regarding your desire to have your tonnage coming into Chicago via waterway treated the same beyond Chicago as the tonnage of bulk grain brought in by the Federal Barge Line.
A. Yes, sir.
[fol. 1816] Q. That was the subject about which he inquired, was it not?
A. Yes. Beyond Chicago. He wanted to know if my tonnage—if I thought my tonnage should be treated the same as the Federal barge tonnage, yes.
Q. Now, if it should happen—he was asking you about bulk tonnage, was he not?
A. Yes, sir.
Q. Bulk grain?
A. Yes.
Q. Now, if it should appear that the Federal Barge Line has not handled any bulk grain on the rates which are specifically mentioned in the tariffs under suspension, so that if those tariffs did become effective, the bulk grain brought in by the Federal Barge Line would likewise be prohibited from moving on the proportional or the reshipping rates, would you still be satisfied to have your grain denied that privilege?
A. No, no.
Q. So long as it is maintained in connection with exlake and exrail tonnage?
A. No, no. I don't want—no, I wouldn't want it that way.

Mr. Belnap: That is all.
Exam. Taylor: Mr. Cole, have you got anything further?
Mr. Cole: Yes.

Recross-examination.

By Mr. Cole:

Q. Mr. Macaulay was just asking you, Mr. Finnegan, [fol. 1817] what the man who buys the grain from you does with the freight bill after he receives the freight bill. And what was it that you said?

A. He records it with the Transit Bureau.

Mr. Enoch: I think you said you didn't know. Didn't you finally say that?

The Witness: I finally said he did record it with the Transit Bureau. That is as far as I do know.

By Mr. Cole:

Q. And Mr. Finnegan, you said then that that registration of the freight bill with the Transit Bureau made applicable to that grain certain reshipping privileges, didn't you? Do you remember that when I was asking you questions on cross examination, prior to Mr. Macaulay's question, I asked you whether you were at all familiar with those regulations of the various tariffs east of Chicago. Do you remember my asking you that?

A. I told you I was familiar with CFA and the Trunk Line; familiar enough to know when it worked for me or when it worked against me, and when I have them before me I can—I am familiar enough then, but I am not nearly familiar enough to talk from memory.

Q. Is this the note that entitles you to the use of those rates——

Exam. Taylor: Now, what tariff are you speaking of?

Mr. Cole: I am showing Mr. Finnegan Exhibit No. 2, [fol. 1818] page 4, note 40 of that tariff, covering the application of reshipping or proportional rates on traffic originating in Northwest territory, note 40, and I am asking Mr. Finnegan if that is the note that entitles him to the use of the reshipping rates on his grain east of Chicago to destinations in CFA.

Exam. Taylor: This is the rate tariff?

Mr. Cole: Yes, sir. This is extracts from the rate tariff.

The Witness: Which tariff is this?

Mr. Cole: That is the CFA.

The Witness: CFA territory?

Mr. Cole: Yes.

The Witness: Now, wait. I have got to read that carefully.

Mr. Cole: That is all right, read that carefully.

The Witness: Now, is this the new one or the old one?

Mr. Cole: That is the present one.

The Witness: This is the present tariff?

Mr. Cole: The present tariff.

Exam. Taylor: Ready? All right, Mr. Cole.

The Witness: Yes, sir.

By Mr. Cole:

Q. That is the rule that enables you to use it?

A. Yes, sir.

Q. Now, out of Chicago to CFA territory, there are two sets of proportional rates, one set that is three cents lower to destinations in CFA territory when the grain arrives in Chicago from Trans-Mississippi territory, and another set [fol. 1819] of proportional rates east of Chicago on grain that gets into Chicago from Northwest territory. That set of proportional rates is 3 cents higher than the trans-Mississippi proportional rates. Are you familiar with that fact?

A. Yes, sir.

Q. When you go east of Chicago to CFA territory, under those rules, which set of proportional rates do you use, the ex-T.M., or the ex-Northwest?

A. The ex-Northwest.

Q. Are you sure, Mr. Finnegan, that you use——

A. Now, you are talking about going into CFA territory?

Q. Yes.

A. With the billing dying there, not going beyond?

Q. No.

A. You are not going to run this into Trunk Line billing?

Q. No, sir.

A. You are going to stop it here in CFA?

Q. Yes, sir.

A. All right.

Q. Now, are you sure that you actually use that proportional rate applicable to ex-Northwest traffic from Chicago to the CFA destination? That is the rate you use?

Mr. Macaulay: I object to the word "you use." He said he didn't use any out from Chicago. His buyer might but he didn't.

[fol. 1820] By Mr. Cole:

Q. That is the rate you are sure is used?

A. I can't say that I am sure it is used always. It is used some of the time.

Q. Well. do you know the circumstances that would prevent its use?

A. No, unless the buyer of this CFA—buyer of this grain in the CFA territory would rather have billing that he could bill beyond. I don't know why he would use it unless he would want it the other way.

Q. I don't understand you there, Mr. Finnegan. If he had billing--what do you mean, if he had other billing that would entitle him to other use? Do you mean to say if that buyer or if that grain dealer happened to have on hand in his office billing on grain that got into Chicago from Trans-Mississippi territory, that that buyer might be able to use the still lower proportional rate that was 3 cents lower than the ex-Northwest proportional rate, if he cancelled that billing from the ex-T.M. territory?

A. No, I don't think he can apply one against the other.

Q. Oh, now wait. If he had billing in his office covering movement from Trans-Mississippi territory and he was selling, say, to Cleveland and Cleveland took a 3 cent lower proportional, if he had that billing from Trans-Mississippi territory, would the man have the choice, then, of surrendering that Trans-Mississippi biiling and getting that 3 cent lower rate?

A. Now, Mr. Cole, I can't answer that. The only thing—[fol. 1821] the only answer I can give to these tariffs—I don't know what the buyer at Chicago does with them. But I know I used them in a few instances and I know what I done with them. I know the ones I applied.

Q. What did you apply?

A. I applied the Trunk Line territory. I never did apply CFA territory. But I do know we are considered as arriving under Northwestern classification, under note E.

Q. You figure that your grain is arriving from Northwest territory when you have applied to that grain the proportionals east of Chicago, is that correct?

A. That is what I figure. That is what I am given to understand.

Q. Now, do you know whether the grain that moves east of Chicago under this note 40 to CFA destination, do you

know whether there is at any time an attempt to set up and protect the payment of through charges on that grain that at least equals the level of the local rate from Chicago to that CFA destination?

A. No, sir, I can't answer you that question.

Q. You don't know whether that is protected or not?

A. Wait a minute. No, I can't answer you right so I won't answer it.

Q. Have you had any connection with this so that you know whether any shipments of your grain, any grain that [fol. 1822] you have sold to your buyer, has gone into CFA territory after you sold it to him?

A. Oh, yes.

Q. Has your buyer ever suggested to you in the slightest degree that the terms or arrangements by which he must operate into CFA territory presents any problem to him in the way of discounts or price impediments or features of that nature?

A. Yes. CFA under Northwestern is higher than CFA territory under Illinois and Iowa.

Q. And Southwest?

A. Well, I don't know about Southwest. I am not—I don't have anything to do with T.M. billing, so I don't know anything about it.

Q. Now, when you go to Trunk Line Territory, do you also use the ex-Northwest proportional?

A. No, sir.

Q. What do you use when you are going east of Chicago, which proportional?

A. The Illinois and Iowa.

Q. To Trunk Line territory?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Now, when you have considered with your buyer the problems that he has from a price standpoint and a dis- [fol. 1823] position standpoint, has he told you that he has any difficulties from any source, this water grain against some other grain that is in here, so that he desires your grain or indicates that those things have an influence on the price that he can pay you for your grain?

A. Oh, no. I don't believe he has ever—now, wait a minute. I will answer that to the absolute best of my knowl-

edge. I don't know what you are trying to bring out but maybe it will help.

Q. Thanks.

Mr. Macaulay: Would you read that last question, Miss Reporter?

Exam. Taylor: Yes, read the question.

(Question read.)

Mr. Macaulay: It is awfully involved.

The Witness: I understand it. Yes, there are times, Mr. Cole, when the demand is in certain places that the barge grain doesn't work to so well.

By Mr. Cole:

Q. Well, Mr. Finnegan, are you sufficiently close to that situation so that you would understand it to the degree necessary to explain it to us?

A. If you will tell me whether you are trying to bring out that exception in tariff 535 made to Illinois grain three or four years ago, is that the point you are leading up to?

Q. No, Mr. Finnegan, not back three or four years from [fol. 1824] now. I would rather have it just considered at the present time without the consideration of these changes that we are proposing. I want to know how it works right now; if there is any impediment in this stuff over Trunk Line territory and whether they have told you that other influences affect the prices.

A. There is no impediment over Trunk Line territory.

Q. Not now?

A. No, sir, but there is into CFA territory some impediment.

Q. Now, the CFA territory, I understood you to say that the difference is brought about by there being two levels of proportional rates east of Chicago, isn't that correct?

A. That is correct. Now, can I ask you a question?

Q. Yes, sir, if I can clear up anything.

A. What is the difference between the Illinois-Iowa grain and the northwest grain on the outbound rate into CFA territory?

Q. Now, just a minute, I will have to find out.

Mr. Macaulay: Mr. Cole, are the questions you are asking for the purpose of impeaching him? If they are, I think he stated he wasn't an expert on tariffs; that he knew how

they affected him. If, on the other hand, it is a matter of interpretation of the tariffs, I think you ought to have your railroad man; in a complicated question that you yourself have to ask Mr. Brown.

Mr. Cole: He asked me a question and I am getting the information for him. Mr. Examiner, do you want me to [fol. 1825] reply to this objection?

Exam. Taylor: You didn't make that as an objection? He was making that as an explanation, as I understand it.

Mr. Macaulay: I was asking you whether you were doing it to impeach the testimony or whether you wanted to find out about your tariffs.

Mr. Cole: I am trying to get Mr. Finnegan to give us an explanation of his position and things that he understands affects his position; and on direct, he went very thoroughly into his position, and now I simply want to see the things that are back of that and to be sure that Mr. Finnegan understands the things back of that the way I have been led to understand them. I want to see whether his understanding is correct or my understanding is correct.

The Witness: If you bring these things to me, I can understand it all right.

Mr. Cole: We are getting along all right, Mr. Macaulay. I think Mr. Finnegan understands me.

Exam. Taylor: By "these things," he means tariffs.

Mr. Cole: Off the record a minute.

Exam. Taylor: Yes, sir.

(Discussion outside the record.)

Mr. Cole: Could I go back to the question that I asked Mr. Finnegan before he asked me a matter of information?

Exam. Taylor: Read the question, Miss Reporter.

[fol. 1826] (Record read.)

By Mr. Cole:

Q. Now, you have gotten the information that you asked me for. Now, from that did you want to change your answer to my question, Mr. Finnegan?

A. I don't believe so, Mr. Cole. You can bring it out farther.

Q. I think I asked you and I believe you said that you weren't sure enough about it to answer me. I want to be

sure on this point. When the grain goes to CFA destinations from Chicago, does the grain have to pay enough of a proportional rate level so that the inbound transportation cost to Chicago plus the application of the outbound proportional rate would total the local rate from Chicago to the CFA destination territory?

A. Well, sir, I don't believe it pays it.

Q. You don't think it pays that?

A. I don't.

Q. And so far as you have been in contact with your purchasers, you have not been informed of any such requirement as that, have you?

A. That is correct, I have not.

Mr. Cole: Well, I think that is all I have; thank you.

Exam. Taylor: Any other questions?

Mr. Cole: May I ask a further question?

By Mr. Cole:

Q. You still have that tariff in front of you, don't you?

A. Yes.

[fol. 1827] Q. Now, under which provision in this rule do you contend that your privilege is shown to use that ex-Northwest level on your grain?

Exam. Taylor: You are still talking about rule 40?

Mr. Cole: I am still talking about rule 40 as shown in Exhibit No. 2, page 4.

The Witness: Provision on shipments which arrive by boat lines at Chicago.

Q. Have you considered the whole terminology of that rule and is there anything in the tariffs that refer to that rule, that refer to the rule in part, or do those rate tariffs refer to just the whole route, "see note 40."

A. Wait a minute. Do you mean is there any more of this——

Q. Yes, for instance the first part of this rule says, "Rates applying as reshipping or proportional rates on traffic reaching the reshipping point via rail or water transportation that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in Northwest territory." Now, how do you apply——

Mr. Macaulay: Parson me. You ought to read the rest of that sentence, "As described below."

Mr. Cole: Yes, "As described below." It says, "Originates in Northwest territory as described below."

Mr. Macaulay: "Or as otherwise stated."

[fol. 1828] Mr. Cole: "Or as otherwise stated."

By Mr. Cole:

Q. Now, what portion of that—where do you eliminate the Northwest territory as a requirement?

Mr. Macaulay: I think that should be left——

The Witness: Where do I eliminate it? I don't eliminate it.

Mr. Cole: Thank you.

The Witness: On stuff coming in. That has always been a question in my mind but I am not good enough to go into that.

By Mr. Cole:

Q. But in your mind, you don't eliminate it?

A. No.

Q. And that is a fair statement, isn't it?

A. Yes.

Mr. Cole: Thank you. That is what I was trying to get from you, just your understanding.

Exam. Taylor: Off the record.

(Dicsussion outside the record.)

By Exam. Taylor:

Q. Now, this rule 40 that you have been reading from also states that, "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission," so this tariff is governed by some further rules?

A. Yes.

Q. That is to say, the transit rules, and isn't all of your traffic that moves by barge from Morris or your shipping [fol. 1829] point there to Chicago transferred in Chicago?

A. Oh, yes.

Q. There is no way of shipping by barge to Chicago and transferring the corn or grain from the barge direct to cars, is there?

A. No.

Q. It must go through the elevator?

A. It must go through the elevator.

Q. And in that sense, it is transferred at Chicago?

A. That is right.

Q. Then the rule 40 that we have been reading from must necessarily be subject to the transit rules, whatever they may be and wherever they are published?

Mr. Belnap: Well, Mr. Examiner, we had a witness for respondents who stated just the contrary. He says that the rate tariff provides all that is necessary for the application of the rates.

Exam. Taylor: I am reading from note 40 that they were talking about.

Mr. Belnap: It says, "Subject to other tariffs." That is subject to classification.

Exam. Taylor: "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission."

Mr. Belnap: That is correct, but I would like to have Mr. [fol. 1830] Tannehill back on the stand to explain what the transit rules are that would affect that application, because I was interested in getting that clear on the record. I thought that after we had finished with him the first day this week, he finally came to the conclusion that the Lake Erie ports, including Buffalo and Chicago, the lake tariffs themselves contained all that was necessary for the application of rates.

Exam. Taylor: That is true, but that should be on brief.

Mr. Belnap: We didn't go further into the tariff, or at least I didn't, as to the transit rule.

Exam. Taylor: The reason we didn't is because we didn't have it to refer to as we have it now, direct on the record, as to note 40.

Mr. Cole: The Examiner does now have before him the rule that is applicable east of Chicago.

Mr. Belnap: That is in an exhibit. That was in the record the first day of this hearing.

Mr. Cole: Yes. That rule that the Examiner just read to us does connect its application up with the transit tariff

that is effective in Chicago, which transit tariff has already been referred to and is in the record. When the witness introduced that, he said that the same provision, the same necessity for a transit tariff, the same reference to a tran-it tariff was not effective from the other Lake Erie ports today; that it did not connect up with any transit tariff east [fol. 1831] of those Lake Erie ports.

The Examiner now has before him and we are considering just what is effective east of Chicago. We are not considering the way, the manner in which it is worked out from those eastern ports.

Mr. Belnap: Well, he said that as to a transit tariff, then he came to the question of the application of a reshipping or a proportional rate.

One difficulty in talking about transit, using the term very generally, is that we are apt to confuse the operation of transit under a single-factor through rate with what we mean when we apply the same term to a movement on a combination of factors, that movement being temporarily interrupted at the point where the combination makes. We do talk about that latter as a transit movement. It has an entirely different character than a transit on a joint through rate. And I took it from Mr. Tannehill, when he finally got through, he was talking about a transit on joint through rate as distinguished from the reshipping proposition; because obviously, the grain at a Lake Erie port also goes through an elevator, and if you have got to have a transit rule in order to make the rule applicable, there will be like necessity there.

Mr. Cole: You don't have to have a transit rule to make it applicable and Mr. Tannehill was very thorough and complete on it.

Mr. Belnap: I thought he was too.

[fol. 1832] Exam. Taylor: Now, Mr. Belnap, if you are drawing a distinction between reshipping rate and proportional rate, this very note 40 starts out, "Rates applying as reshipping or proportional rates".

Mr. Belnap: Oh, no, I make no distinction. Those two are in exactly the same category. They are the rates which the carrier from the reshipping or proportional rate point holds himself out as willing to apply on traffic originating from beyond. They are on precisely the same basis.

Exam. Taylor: I think we have gone far enough on that, and we can argue on brief.

Mr. Belnap: I can't argue on facts that aren't in the record, except by the general statement that there must be some connection on the transit tariff in order to make them applicable. I have a witness who says that isn't necessary. Now it is discovered that there is a provision in the very note which says you have got to do something, and I would like to have Mr. Tannehill here to straighten that out, if it isn't straight on the record now.

Mr. Cole: Of course, as we explained to all members present last Saturday, I asked special permission to put Mr. Tannehill on Saturday morning, because he had an engagement that would hold him this complete week at Cincinnati; and I am sure all the facts, in connection with the facts that Mr. Belnap now considers and the uncertainties [fol. 1833] that Mr. Belnap contends are in his mind about this thing, have been clearly covered in the record.

Mr. Belnap: By whom?

Mr. Cole: By Mr. Tannehill when he was on and your questions of Mr. Tannehill.

Mr. Belnap: I thought it was clear too, but now the Examiner says, "Here is a new fact" and says, "You can address yourself argumentatively on brief." I can't argue about something when I don't know what the fact is.

Mr. Cole: No, the Examiner just simply referred to a note in that tariff covering the Chicago situation and it is covered completely and solely in Mr. Tannehill's example.

Mr. Macaulay: Shouldn't we have a copy of that tariff in the record?

Exam. Taylor: No, it is unnecessary. Tariffs are always available; this tariff that is in issue here.

It seems to me, Mr. Belnap, that your difficulty is in recognizing that the rule, recognizing, whether the rule is clear or ambiguous. We are talking about note 40. If it is ambiguous, it needs clarification. If it isn't ambiguous, it doesn't need clarification. If it is clear on its face, it is a lawful tariff and lawful rule.

Mr. Belnap: I think it is clear on its face. Now, when he comes, however, to a transit rule and a witness, so Mr. Cole thinks, at some other point where we have rates conditioned [fol. 1834] on a prior water movement, there is no necessity for a transit rule—that is where I get lost in the subject. At both places, as Mr. Tannehill explained, they go through

a transit house, a house which handles through all-rail grain as well as the grain which has had a prior transportation by water and subsequently by rail; and I confess to you, I am completely ignorant as to what the situation is in the light of what Mr. Cole and yourself now say.

Exam. Taylor: I think this whole thing is highly argumentative, and the place to argue the point is on brief.

Mr. Belnap: I am not worried about the facts; I am trying to find out what the facts are.

Exam. Taylor: The facts are as stated in this record. If they haven't been brought out, I say they should be.

Mr. Belnap: It is unfortunate, at the time I had this under discussion with Mr. Tannehill, we didn't ask him, why do you have to have a transit rule at Chicago governing such a situation where, under identical circumstances with relation to carriers and at a transit house, you don't have a rule at Buffalo?

Mr. Cole: Off the record a minute?

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Would you state that for the record?

Mr. Cole: Listen to it and see if I get it straight. Jack, [fol. 1835] will you be sure I get this straight and correct me.

Mr. Brown: If you are going to say that the tariff in Toledo is complete in itself and covers the transit and the policing as well as the application of the rates, I am going to say you are wrong. I can't agree to that.

Mr. Belnap: I think he is wrong too. Let's be off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Very well, we will adjourn at this time until 1:30.

(At 12 o'clock noon, a recess was taken until 1:30 o'clock p. m.)

Afternoon Session

1:30 p. m.

Exam. Taylor: Come to order, gentlemen. Now, Mr. Brown, I believe you have some tariff references?

Mr. Brown: Yes, I have been able to obtain reference to Agent Jones' transit grain tariff at Toledo, Ohio. It is his ICC No. 3240. Now, at Buffalo, New York, in connection with the ex-lake rate, I have reference to the Pennsylvania individual tariff, which is number, ICC No. 2065.

Mr. Belnap: Mr. Examiner, may I make a statement regarding this general proposition of transit tariffs?

[fol. 1836] Exam. Taylor: Yes. It is in an endeavor to clear up the record, isn't it?

Mr. Belnap: Yes, to make a request as far as the issues of the case are concerned.

I appreciate that in every rate case before the Commission, whether it rises on formal complaint or an investigation and suspension proceeding, there is available to the parties issues under section 6, if either they or the Commission desire to raise them. The legality of rates in this proceeding, so far as the ex-barge grain involved is concerned, the respondents have under their present tariffs, whether they be rate tariffs or transit tariffs or what not, have been applying the reshipping and proportional rates, and they have come to the Commission with a proposal to discontinue that application, asserting, however, that it is the present application.

In very general words, I think I have heard counsel, perhaps Mr. Enoch, say that he differed with the principal witness of the respondent as to the application of tariffs. Neither he or any other party, however, has distinctly raised any question as to section 6, although I think perhaps you and I have heard just general comments about it off the record; some of them at the conclusion of this morning's session.

[fol. 1837] Counsel in briefing the case necessarily desires to direct his attention to every issue which the Commission may be called upon to decide, and he can't be very helpful to the Commission unless he does know the issue and precisely how it is raised and how it is to be presented, and for that purpose I am now formally requesting anyone who is a party to this case, who will on brief raise any issue as to the legal application of the reshipping or proportional rates on ex-barge traffic, to do sufficient now to explain what the issue is, on what it is based; and that brings me to say one thing about the matter of having transit tariffs a matter of record, either simply

because they are in the Commission's file or because they have been mentioned by number here.

It is not inconceivable that what order the Commission enters in this case might be taken to court. If the findings and orders of the Commission are in any part predicated on tariff provisions which are not a part of the record, physically a part of the record, either by the tariff being put in or excerpts from the tariff being put in, the court would not be in a position to pass upon the legality of the Commission's findings. Consequently, it seems to me that any finding or order which the Commission may make which would be predicated on the words in the tariff, we should have the tariff itself made a part of the record.

Exam. Taylor: Now, as I understand it, then, you re-
[fol. 1838] quest that any party having the viewpoint that the rate tariff which is under suspension in this case is bound by any other tariff, particularly the transit tariffs, is requested to furnish the item numbers of that transit tariff which he asserts is involved in this proceeding?

Mr. Belnap: The items themselves as a matter of exhibit in the proceedings; the latter on the ground that if the case does go to court, it will be necessary to have that as part of the record, in order for the court to properly deal with the findings of the Commission, if such findings are in any part predicated on something not a matter of record here.

Exam. Taylor: Mr. Enoch, have you a reply to make to that?

Mr. Enoch: If the Examiner please, I think I said on the record here in the early part of this proceeding that my contention was that on this ex-river grain, considering the manner in which it has been handled from origin to Chicago, the tariffs of the eastern lines—and I refer to those because there were no other tariffs—did not permit the application of true proportional rates to that grain; and I think I further said that it is our position that there was no way, by tariff provision, that the eastern lines could arrange to handle this grain which is the subject matter of this investigation eastbound out of Chicago, on any other than the regular going local rate. If I didn't say that, I want it to be understood that that is our posi-
[fol. 1839] tion now.

Mr. Belnap: I would like to inquire, Mr. Examiner, on what the position is predicated.

Mr. Cole: Mr. Examiner, may I make a statement?

Exam. Taylor: Certainly, Mr. Cole.

Mr. Cole: It seems to me that we have the usual and customary I & S proceeding here. We have certain present tariffs that are presently effective and those tariffs have been made a part of the record.

Exam. Taylor: Not physically but by——

Mr. Cole: Physically.

Exam. Taylor: Physically?

Mr. Cole: Physically. Then we ha e certain changes that the carriers propose to make in those tariff rules, and those changes have been physically made a part of the record.

The protestants have claimed that under the present tariffs, they have been able to do certain things. They claim that under those tariffs as at present in effect, certain privileges have been extended to them. Yet in spite of that claim, in the face of that claim, notwithstanding that claim if you prefer, we still have the ordinary I & S case. We have got the tariffs provisions here that are presently effective, and they are in the record. We have got here the things that we propose to do that will change those tariff provisions, and we have had our witness explain the [fol. 1840] purpose of those changes, how that wording will read under the new application, and if it develops through the case that the people who have been dealing with the tariffs in the past have misconstrued the plain terms of a presently published tariff, certainly I can't see what we could do that would any more forcibly bring that to the attention of the Commission in an I & S case. We are trying to make a change and there it is, the present and the future.

Exam. Taylor: Well, Mr. Cole——

Mr. Cole: Yes.

Exam. Taylor: You have in exhibit 1 excerpts from Jones' ICC 3300. That, as I understand it, is the rate tariff?

Mr. Macaulay: Is that exhibit 1 or exhibit 2?

Exam. Taylor: That is exhibit 2.

Mr. Cole: Exhibit 2? That is the present.

Exam. Taylor: That carries the note 40 that we were talking about before the luncheon recess.

Mr. Cole: Yes, sir. That is the present. That represents one of the tariffs. In all, there are four tariffs that are to be changed by the same changes.

Exam. Taylor: They are all Jones' tariffs; ICC 3047, 3055, 3272 and 3300. But those tariffs, as I understand it, are in turn governed by a transit tariff, and up to the present time the transit tariff has not been incorporated in the record, physically.

Mr. Cole: The Chicago transit tariff you refer to?

[fol. 1841] Exam. Taylor: Yes, Jones' ICC 3204.

Mr. Brown: Mr. Examiner, I want to raise the question, has anyone here taken the position that the transit tariff itself must be changed in order to effect the cancellation of these reshipping rates that are taken out under the suspended supplements? If no one is raising that position, it isn't necessary, in my opinion, to put in physically the transit tariff, because there is no change in it.

Exam. Taylor: Now, Mr. Enoch's objections might come under the transit tariff, as I see it.

Mr. Belnap: I don't understand that it does. I appreciate the possibility of that, and that is what I would like to have him define.

Mr. Enoch: I think, so far as we are concerned here, Mr. Belnap is in his right in asking to be informed as to the tariff items on which we rely in support of the proposition that the outbound rates that have been applied on this grain from Chicago are not applicable, and I will endeavor to give of record those tariff items, and if the tariffs are not all in evidence, we will supply those items in other tariffs that are on file with the Commission which we think are pertinent and will depend upon——

Exam. Taylor: Could you do that by tomorrow morning if you got in touch with your office right away?

Mr. Enoch: I will do the best I can. I don't want you [fol. 1842] to hold me to that too strictly. I will get them as quickly as possible.

Exam. Taylor: I would like to have them before we close the case.

Mr. Enoch: Oh, yes, of course.

Mr. Cole: Mr. Examiner, I now have here the Chicago transit tariff ICC No. 3204, with the presently effective supplements——

Exam. Taylor: What are their numbers?

Mr. Cole: Nos. 17 and 15, and if the parties are interested, as they have expressed themselves in having a copy of this tariff physically a part of the record, I would like to now offer in evidence a copy of this tariff and we will get for anybody who request it a copy. If anybody requests it of me, I will have them mailed a copy.

Exam. Taylor: Will that comply with your request?

Mr. Belnap: No, Mr. Examiner, because there is a transit tariff which covers a great many situations. Probably very few of the rules and regulations pertain to a matter which we have under consideration. Some of them may be in general language, so that there would be a question whether that pertained to the situation which was here involved, and I wouldn't want to have made a part of the record the whole tariff unless there is a specification of the tariff items on which someone relies, if anybody does so, in support [fol. 1843] of the proposition either that there is no change in rates or that in any respect there has been an improper application of the proportional or reshipping rates in the past. I understand Mr. Cole doesn't take that position. His witness said that he construed the tariffs as making the proportional rates, reshipping rates applicable.

Mr. Day: I didn't so understand.

Mr. Cole: We didn't cover that point at all.

Mr. Belnap: Mr. Tannehill.

Mr. Cole: Mr. Tannehill didn't have any occasion to touch upon that.

Mr. Belnap: I asked him the question and that is the answer he gave me.

Mr. Cole: He didn't cover that point you referred to, Mr. Counsel.

Mr. Macaulay: Don't you think we had better wait? Maybe Mr. Enoch would like to be in on some of this. He is on the phone.

Exam. Taylor: Yes.

(Short intermission.)

Exam. Taylor: Now, Mr. Belnap, I will call your attention to exhibit No. 37, which showed the transit record outbound, on one of the shipments that we referred to.

Mr. Belnap: Yes, I recall that exhibit.

Exam. Taylor: At the foot of that paper, it says, "Shippers' certificate. This is to certify that the billing listed

[fol. 1844] under inbound is applicable to the commodity forwarded, as provided in CFA RR Tariff No. 413-K, ICC 3204."

Mr. Belnap: That is correct.

Exam. Taylor: That necessarily means that it complies with every single rule that may be applicable in that tariff.

Mr. Belnap: Which may be applicable, and to the best of my knowledge, no one in this case has raised any question as to the non-compliance with any of the rules; not a single soul has raised any question, so it would be quite a burden to try to go through that whole tariff with no issue involved as to it.

Mr. Cole: Now, if I may be permitted to make a statement right there, I have contended right from the start of this case that there was no issue here referring to anything in this tariff; that it simply covered the policing regulation. Yet we received all sorts of little innuendos as to the necessity of having this tariff in the record, that it may have something in there—that is the words, I am using their words—that there may be something in that tariff that would affect our issues. I say there isn't, but in order to cover that innuendo and prevent that from creeping into this case any more from now until this case is finally decided, I don't care where it goes, to the Supreme Court, I have offered to put the matter in as an exhibit and I think that in view of the statements and the certifications that it complies with this thing, whatever those policing requirements are; that I should be permitted to put the [fol. 1845] whole thing in without trying to delineate any particular thing that may apply to this, that and the other thing, because the rules are clear and it is not very big.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: I think that I should receive this transit tariff, B. T. Jones' ICC 3204 and the present effective supplements, being Nos. 15 and 17 in evidence in this case, and that in order to meet the position of Mr. Belnap, Mr. Enoch is agreeable to supplying later in the record the particular items in that tariff upon which he relies in taking the position that he takes.

Mr. Enoch: That is correct.

Mr. Belnap: Is it to be understood, except that as to the items to which he calls my attention, no part of the tariff is to be considered in evidence?

Exam. Taylor: How? Read that, please.

(Record read.)

Exam. Taylor: I don't know about that. In view of the statement on an exhibit from which I have already read, I don't think it could be limited to that. But so far as Mr. Enoch is concerned and his position it might be so construed.

Mr. Belnap: Am I to understand that he is the only who takes the position that there is any question as to the legality of the application of these proportional or re-[fol. 1846] shipping rates to ex-barge traffic in the past?

Mr. Day: That is an entirely different question. We all agree with Mr Enoch on that.

Mr. Belnap: I should think Mr. Day could speak for himself, but there are forty people in the room and I doubt if he could speak for all of them.

Mr. Day: You wanted your clients to announce their position, is that it? I assume you are talking to one side of the case and we are talking to the other.

Exam. Taylor: Do you agree with that, Mr. Cole?

Mr. Cole: I would rather not, for this reason, if there is some evidence in the record and I put that in, the whole tariff, I would like everybody, not only myself, I have explained my position several times, but everybody to have free access to everything there may be developed in that tariff or from that tariff, no matter what it might be, Mr. Examiner.

Mr. Belnap: Mr. Examiner, that certainly complies with the requirement I mentioned as to making a proper record going to the court, if that happened in this case, but it certainly doesn't meet the practical question, with what issue am I confronted in this proceeding?

Exam. Taylor: Well, it does comply with the requirements of law, doesn't it?

Mr. Belnap: That it is a matter of record?

Exam. Taylor: No, as to its being the lawful rate. The [fol. 1847] lawful rate is the published rate.

Mr. Belnap: There is no question about that.

Exam. Taylor: This will furnish that information.

Mr. Belnap: Except that everybody agrees it hasn't anything to do with that subject.

Exam. Taylor: Well, the agreement, as far as Mr. Enoch is concerned, he is willing to give you the items to which he will refer.

Mr. Belnap: That is fine, as far as he is concerned. Now, is there anybody else who thinks that there is anything in that transit tariff which has anything to do with the application of rates?

Mr. Brown: Yes, I do.

Mr. Belnap: Will you call my attention to the items too, Mr. Brown?

Mr. Brown: Yes. I would want that tariff, since it is introduced, to be a part of the record in this respect, that before any Chicago shipper of barge grain has been able to get the benefit or get the reshipping rate by rail, he had to comply with the terms of that transit tariff; and I therefore don't want it thrown out except as to the items that may be raised by Mr. Enoch.

Exam. Taylor: I think we have progressed sufficiently in that.

Mr. Belnap: I would like to ask at this point——

[fol. 1848] Mr. Day: May I make a statement?

Mr. Belnap: I would like to make one request.

Exam. Taylor: Mr. Day.

Mr. Day: So far as this transit tariff is concerned, I don't know what it contains and I am not particularly concerned at the moment with what it contains, but I do say that to confine the application or non-application of these rates to the barge traffic, you have got to look at the contents of the tariffs as exhibited in Respondents' Exhibits 1 and 2, and I say that in those provisions, there certainly is ample restriction against the use of these reshipping rates to barge grain originating in the state of Illinois.

Mr. Belnap: Now, I would like to know what Mr. Enoch refers to, if he can specify it.

Exam. Taylor: He has agreed to furnish you that information later.

Mr. Belnap: I should say Mr. Day refers to, if he would specify it for me.

Mr. Day: Yes, Rule 40 and Rule 20.

Mr. Belnap: Any particular provision in them?

Mr. Day: You will notice, Mr. Belnap, that the Rule 40, that you have got to read the entire rule in determining the application of any rate; because reference is made in one section or another to rates, or another subject to this note. You can't just pick out some particular line in that [fol. 1849] note and say that that is the thing that determines it. You have got to read the entire note in the light of the description of Northwest Territory as indicated in the tariff.

Mr. Belnap: Might I inquire if Mr. Day is speaking for the New York Central only or for all respondents?

Mr. Day: I am speaking here as attorney for at least the respondents that are active in this case.

Mr. Belnap: I think I am entitled to some specification in that.

Mr. Day: Well, you heard Mr. Garrison's comment back here a minute ago. I don't know whether I am authorized under the circumstances to say that the Pennsylvania Railroad will go along with what I say.

Mr. Belnap: But you do speak for the New York Central?

Mr. Day: I have been speaking for them for 31 years, Mr. Belnap.

Mr. Belnap: And it is your opinion as counsel for the New York Central that the proportional and reshipping rates heretofore applied on ex-barge grain were illegally applied?

Mr. Day: That is what the tariff says.

Mr. Belnap: I mean, it is your opinion?

Mr. Day: Yes, yes.

Exam. Taylor: All right, now. B. T. Jones' Tariff ICC 3204 will be received as exhibit No. 62. Supplement 15 to the same tariff as exhibit 62, Part 2; Supplement 17 to the [fol. 1850] same tariff as exhibit 62, Part 3.

(Exhibits 62, Parts 1, 2 and 3, received in evidence.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Let the record show that Mr. Cole will furnish any party that desires copy of exhibit 62, and that he will furnish the Examiner with exhibit 62 and parts thereof.

Mr. Cole: May I understand, Mr. Examiner, that I only need furnish that for the people who ask me for it at this hearing now?

Exam. Taylor: That is correct. Will everybody stand that wants a copy of this right now, to settle it. Mr. Macaulay, Mr. Root, Mr. Belnap, Mr. Brown, Mr. Enoch.

Mr. Cole: Now, I have Mr. Enoch, Mr. Macaulay, Mr. Root, Mr. Brown and Mr. Belnap.

Exam. Taylor: That is all that stood up.

Mr. Cole: And the Examiner.

Exam. Taylor: Now, gentlemen, are you ready to go forward with the examination of the witness?

Mr. Macaulay: I understand that everybody concluded except for that question you asked about the transit.

Exam. Taylor: Have you concluded your examination of the witness, Mr. Cole?

Mr. Cole: Yes, sir.

[fol. 1851] Exam. Taylor: Mr. Day, do you have anything?

Mr. Day: No, sir, I have nothing.

Exam. Taylor: Mr. Brown, have you anything else of this witness?

Mr. Brown: No, sir.

Exam. Taylor: Mr. Enoch, have you anything further?

Mr. Enoch: Nothing further.

James F. Finnegan recalled, previously sworn, testified further as follows:

Direct examination.

By Exam. Taylor:

Q. Now, Mr. Finnegan, on the average, how many barges do you ship up to Chicago a week? Just on the average?

A. I would say three barges a week.

Q. Three barges a week?

A. Yes.

Q. Those barges are loaded from your elevator?

A. That is right.

Q. And what is the name of that town?

A. Patonville.

Q. The south side of the river, across from Morris, Illinois?

A. Right.

Q. According to the record as it stands, the bill of lading is executed on a form furnished you by the Mechling Barge Company?

A. Right.

[fol. 1852] Q. You make that out?

A. We fill in the tonnage that is on it, where it is billed from, from Patonville, and who is shipping it.

Q. Who is shipping it?

A. That is right.

Q. Who is shipping it?

A. The Finnegan Grain Corporation.

Q. The Finnegan Grain Corporation?

A. And who it goes to.

Q. But you don't put it in the record?

A. No, we don't.

Q. Now, that weight that you put in this bill of lading, you put it in the form of a weight or as the number of bushels?

A. No, as the number of bushels.

Q. Number of bushels?

A. That is right.

Q. The accurate weight could not be determined until the outbound weight is taken at the elevator in Chicago?

A. That is right. We could by taking more time weigh into the barge and know exactly what was in it.

Q. Now, shipping three barges a week, I would think that you would be pretty well familiar with the whole transaction and that is why I am going into this thing. You have been up with some your barges, have you? Have you gone up to Chicago on some of your barges?

[fol. 1853] A. I never have. Your Honor, I never have.

Q. You have been in Chicago when they have been received?

A. Yes.

Q. Do you know who makes out the expense bill?

A. No, sir. I don't know that.

Q. Have you seen those expense bills?

A. I have on occasions, yes. I have only once or twice.

Q. The great majority of your shipments, I believe you said, were sold to the Norris Elevator Company?

A. That is right.

Q. And deliveries made at the Norris elevator on the Sag Canal in Chicago?

A. That is right, if it comes in through the Sag Canal.

Q. Also some to the Continental?

A. I haven't sold Continental any for two or three years.

Q. Anybody else?

A. Not in Chicago. Norris only in Chicago.

Q. Why do you say it that way?

A. I have sold some grain to Memphis and other points, see.

Q. Oh, south?

A. Yes.

Q. Where do you get your requests for the shipments and the bid for the shipments? Where do you make this agreement with them to take a barge load?

A. Oh, I sell them that over the phone.

[fol. 1854] Q. Do you sell it over the phone to Norris and Company?

A. That is right.

Q. Not through any third party?

A. No.

Q. Never?

A. No. I have. The past year, I haven't sold through a third party. I have at various times sold through a commission man.

Q. Who was it?

A. M. L. Vehon.

Exam. Taylor: Is that all from this witness? Does that bring up any further questions?

Mr. Enoch: I wonder if there wasn't an inconsistency here, an inadvertent inconsistency. Mr. Finnegan has testified that the freight charges are paid in Chicago, and I call your attention to exhibits 35 and 36, which purport to be shipments from Finnegan Grain Corporation to a Chicago house, and the description rendered to support the outbound movement shows prepaid, and I wondered if there were any explanation to be made of that.

The Witness: I can't make any. It is deducted from the price of my grain when it is unloaded and weighed.

Exam. Taylor: Is that all from this witness?

Mr. Macaulay: That is all.

Exam. Taylor: Witness excused. The next witness.

(Witness excused.)

Mr. Macaulay: Mr. Donahoe.

[fol. 1855] JOHN T. DONAHOE, was sworn and testified as follows:

Direct examination.

By Mr. Macaulay:

Q. State your name, please.

A. John T. Donahoe.

Q. Where do you live?

A. Morris, Illinois.

Q. Do you own or operate any farms?

A. I operate 320 acres of land and own about 650 acres more, and then I take care of 700 acres for some minor heirs; relatives of mine.

Q. Aggregating about 1700 acres?

A. Roughly, about 1700 acres, yes, sir.

Q. Is any grain raised on those farms?

A. Yes, sir.

Q. Do you have anything to do with the selling of that grain?

A. Yes, sir.

Q. How long have you operated these farms that you spoke of?

A. The one that I operate myself, about 15 years, and I have looked after the rest of the property since the death of my father, about 1934.

Q. Did you have occasion to sell any of the grain from any of these farms prior to 1934?

A. Yes, sir.

Q. For how long a period prior to that, do you recall?

[fol. 1856] A. Well, since 1923.

Q. Did you ever have occasion to note, prior to 1934, the difference in the price received by you from the local elevator and the Chicago price on the Board of Trade?

A. Yes, I have.

Q. Do you have a recollection as to the relationship of the price received with the price on the Chicago Board of Trade?

A. Well, roughly, it would be——

By Mr. Enoch:

Q. No, he said have you got a recollection?

A. Yes, I have.

By Mr. Macaulay:

Q. Will you state what that is?

Mr. Enoch: I object unless he gives the specific figuers.

By Exam. Taylor:

Q. Can you give specific figures?

A. Well, about 10 cents a bushel.

Mr. Enoch: I move that the answer be stricken out. Now, may I suggest, I think the Commission ought to, if it is material at all, it ought to know on the day the transaction occurred, what the Chicago price was he is talking about and how must he got down at Morris or at his farm.

Exam. Taylor: Can you meet that objection?

Mr. Macaulay: I can't meet that because it is a matter of past history; and I think, however, that the question should be allowed to stand because he is stating his recollection and his actual handling of the rates. He is not predicating it on what somebody else got; he is predicating it on his [fol. 1857] own experience over a number of years. I think that relationship can be testified to in that way.

Exam. Taylor: It will be received, subject to that objection and open to cross examination at the appropriate time.

By Mr. Macaulay:

Q. Have you had occasion to sell any grain since 1934?

A. I have, yes.

Q. Have you sold any grain at any of the local river elevators at Morris, Illinois?

A. Yes.

Q. Or Patonville?

A. I have.

Q. Are you able to state whether or not there is any different range in the relationship of the price received by you now and the price received by you prior to 1934, as related to the Chicago price?

A. Yes, roughly, I would say——

By Mr. Enoch:

Q. Are you able to state it? I think that is the question; and the answer is yes to that. I am going to object if you are going ahead and——

A. Yes, I think I can.

By Mr. Macaulay:

Q. Did you sell any grain during 1939 to the river elevator?

A. Yes, I did.

Q. Calling your attention to the year 1939, a transaction [fol. 1858] which you may have had in 1939, can you state

whether or not the—can you state about what the relationship was with reference to the Chicago price and the price you actually received?

Mr. Enoch: Please note an objection to that, if your Honor please.

Exam. Taylor: Same objection, same ruling.

The Witness: Well, my answer to that would be approximately 3 cents; a difference from before the river elevator—or in other words, it would be, where it used to be roughly 10 cents, it would be 7 cents today.

Exam. Taylor: That is all, Mr. Macaulay?

Mr. Macaulay: That is all.

Exam. Taylor: Any questions by counsel for protestants? (No response.) Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Donahoe, I understand you are a farmer in the vicinity of Norris?

A. Morris.

Q. Morris, Illinois?

A. Yes, sir.

Q. And your testimony is that you today, since the waterway has been in operation, receive nearer the Chicago price than you did before the waterway was in operation, isn't that so?

A. Yes, sir.

Q. You sell your grain on the basis of the delivered price [fol. 1859] in Chicago, don't you?

A. I sell my grain on—yes. Now, of course I don't know how this man does with the grain, but I take as a measuring stick the cash market on the day that I sell my grain, the cash market in Chicago.

Q. You sell your grain with relation to the transportation costs that it takes you to get from your farm to Chicago, don't you?

A. The grain man takes care of that, of course.

Q. Isn't that reflected in the amount of money that you secure for your grain?

A. Yes, sir, that is right.

Q. Now, do I understand that we are doing anything in this case that is going to affect in the slightest degree the

cost of hauling grain via water from Morris, Illinois, to Chicago?

A. Maybe not in the cost from Morris to Chicago.

Q. That is all I asked you. Are we doing anything in this case that will affect the cost of the transportation of grain from Morris, Illinois, to Chicago by water?

A. No, I guess not.

Mr. Cole: Thank you. That is all I have.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Where is this farm of yours located?

A. The one I operate myself is about 3 miles from Morris, and the rest of the land referred to is——

Q. Now, just a minute. Let's take this 320 acres first.

[fol. 1860] A. Yes.

Q. Three miles south of Morris?

A. Yes, sir.

Q. Is Morris the nearest town?

A. Yes, sir.

Q. How much corn do you produce there?

A. In 1939?

Q. Yes.

A. About 5,000 bushels.

Q. Did you sell it?

A. In 1939, part of it. Some of it is sealed.

Q. What other crops did you have?

A. Oh, the regular farm crops of that community; oats, beans.

Q. How much oats and beans?

A. The oats was all kept for feed. I had about 50 acres of oats.

Q. You don't know what it ran?

A. No, I wouldn't. It has just been fed up; just thrashed and we fed it.

Q. You don't know whether you got a thousand bushels out of it?

A. I could tell you roughly, yes. Probably went 40 bushel to the acre; 2000 bushels.

Q. How many acres did you have in corn?

A. About 1000 acres.

Q. And the rest in what?

A. Some beans, some 20 acres in beans, 15 acres of al-
[fol. 1861] falfa and the rest in pasture.

Q. Where you sold corn or other grain, you sold it to the elevator at Morris, did you?

A. Yes, sir.

Q. To the Square Deal Elevator?

A. The Finnegan Grain Company.

Q. The Finnegan?

A. Yes, sir.

Q. Do you always sell your grain to Finnegan?

A. I have for the last four or five years, yes.

Q. How do you get it to the elevator?

A. By truck.

Q. Your own truck?

A. No, sir, hired trucks.

Q. Hired trucks?

A. Yes, sir.

Q. One of the neighbors?

A. As a rule, it is the man that has the sheller; does the shelling and hauling.

Q. The man that goes around the country shelling corn?

A. Yes, sir. He has the trucks and does the shelling and hauling.

Q. And he hauls it as soon as he shells it, is that the way it works?

A. Yes, sir.

[fol. 1862] Q. What do you pay to haul it to Morris?

A. I have always—I think from this farm, it is about a cent and three-quarters a bushel to haul it and shell it, from this particular farm.

Q. You don't know what he charges to haul it?

A. No, sir, I don't.

Q. You always pay the cent and three-quarters and he does both?

A. He does the job for a cent and three-quarters, yes sir.

Q. You never did have any grain trucked without—that is, by someone else?

A. Oh, I have, yes, a few times.

Q. What did they charge?

A. Depended on the distance, the mileage. Anywhere from a cent to a cent and a half a bushel.

Q. And what is the ordinary shelling charge?

A. A cent a bushel.

Q. A cent a bushel?

A. Yes, sir.

Q. Where is this 650 acres that you own?

A. There is 240 acres seven miles from Morris.

Q. Seven miles south?

A. South, yes. There is 160 acres more that is about 14 miles south and west.

Q. Near what towns?

A. Well, the closest town is Verona.

[fol. 1863] Q. Verona?

A. Verona. And then there is 200 acres about 600 miles from Morris, south.

Q. South?

A. Yes, sir.

Q. That would be near Dwight?

A. About half way between Dwight and Verona.

Q. Did you inherit those particular tracts?

A. Yes, sir.

Q. Is the grain raised on those three tracts hauled to Morris?

A. Yes, sir.

Q. In every instance?

A. Yes, sir.

Q. You don't haul any to local elevators?

A. No, sir.

Q. Your sales are 100 per cent with Finnegan, are they?

A. For the last two years, two or three years, yes.

Q. Where are the other 700 acres? Are they in the vicinity of Morris or these other farms?

A. They are in the vicinity of those other farms. They are really closer Mazon, which is about 10 miles from Morris. They are near Mazon.

Q. And is the operation from these other farms about as you have described at your own farm?

A. They are rented, yes, sir. Those other farms——

[fol. 1864] Q. No, I mean the sheller looks after the shelling and hauling for you?

A. Yes, sir.

Q. And the grain is hauled to Morris in each instance?

A. Yes.

Q. What is the highest charge made to any of these farms for shelling and hauling?

A. Well, I will say this. We have one man that has shelled and hauled most of this grain, and I suppose he gives us a little better price; about a cent and a quarter or two cents.

Q. He makes you a flat charge on account of the big business you do with him, is that right?

A. That is right. I think two cents is about the top from the farthest haul.

Q. And what is the farthest haul?

A. Roughly, about 17 miles.

Q. Do you know the capacity of this man's truck?

A. No, I don't.

Q. You don't know how many bushel- it will haul?

A. No, I don't.

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Do you sell any oats from any of these other farms?

A. Very little; just maybe to clean out a bin, or a few [fol. 1865] hundred bushel-.

Q. Have you sold any oats in the past four or five years other than you have just described?

A. No, nothing only——

Q. Did you sell anything that bases on Chicago for price?

A. Beans would be about all.

Q. Any other grain?

A. No, sir.

Q. How do you move your beans out that move to Chicago?

A. Well, I will have to say that we have sold very little beans. We are not much on raising beans, so we have sold very little of them, and I have always just paid very little attention to the price; just took the price, whatever it was.

Q. Do you remember the day you sold your corn or one of the days you sold your corn?

A. No, I don't.

Q. How many bushels of corn did you sell in 1939?

Exam. Taylor: You mean from all of his farms?

By Mr. Enoch:

Q. Well, out of this 5000 bushels that were raised on the 320 acres.

A. How much of that 5000 bushel—there was 15,000 bushel- shelled and I probably fed a thousand, 1500. About 2000 bushels I sold.

Q. Did you sell it all at one time?

A. Yes, I did.

Q. Do you remember the day you sold it?

[fol. 1866] A. No, I don't.

Q. Was it in December or November, 1939?

A. No, I sold some corn in—some corn was sold in September.

Q. Was that old corn or new corn?

A. Oh, 1939. No, that would be old corn. You want to know of the 1939 crop?

Q. You sold 2000 bushels of this 5000 you raised in 1939?

A. No, that is the 1938 crop.

Q. Oh, the 1938 crop?

A. Yes. The 1939 crop is still there.

Q. You haven't sold any in 1939?

A. No, sir, of the 1939 crop. I have sold corn in 1939.

Q. Now, didn't you say that you sold that all at one time?

A. The 2000 bushels?

Q. Yes.

A. Yes.

Q. And was it all delivered and shelled at one time?

A. Yes, sir. I think this man has three trucks and he took it all.

Q. Do you remember what month it was sold in?

A. I think that particular lot was sold in September.

Q. Do you remember what week or what day?

A. No, I do not.

Q. So that we can't find out what the cash price was in Chicago on the day that—do you have any records that would show that?

[fol. 1867] A. I have records at home, yes, but I haven't any idea what the price was. I haven't even an idea on the price.

Q. How much did you get for that corn?

A. Now, you have got me there; I wouldn't know, I wouldn't know.

Q. You must operate a country elevator, don't you?
A. No, sir.
Q. Have you got any interest in one?
A. No, sir.
Q. Any interest in the Finnegan Grain Corporation?
A. No, sir.
Q. Nor any one of the Finnegan enterprises?
A. No, sir.
Q. Who is this man that does this trucking and shelling?
A. Well, there is two or three different men. The last man is—by name? You would wish his name?
Q. Yes.
A. Seward Hauge.
Q. Without naming them, will you tell me—are they located in Morris?
A. Local men.
Q. In Morris?
A. This particular man is a farmer north of Morris.
Q. Any of them located in Morris?
A. I think they are all farmers outside Morris.
Q. Any of them affiliated, so far as you know, with any [fol. 1868] of these people in Morris that are engaged in shipping this corn up the river?
A. No, I don't think so. They run land there; renters, most of them, I believe; bought these mounted shellers and went into this.

Mr. Enoch: That is all.
Exam. Taylor: Mr. Brown.
Mr. Brown: Yes, sir.

By Mr. Brown:

Q. Mr. Donahoe, when you receive a bid of grain from Mr. Finnegan, does that require you to deliver it at his elevator at Patonville?
A. Yes, sir.
Q. He never bids you a price at the farm?
A. Oh, I guess he has, yes.
Q. But is it usual that you have to make delivery at the elevator?
A. Yes, we usually do. Of course, it makes no difference if he bids me at the farm, he just takes the shelling and hauling out, so it is as broad as it is long, in money.

Q. But after the grain is delivered, no matter whether you deliver it direct or he takes it at the farm, when you get your money, you are entirely through with that transaction?

A. Yes, sir.

Q. How did you figure this 7 cent difference between the price you had been receiving for corn and the Chicago price that same day? I assume you meant the Chicago cash price, although you didn't say so.

[fol. 1869] A. You misunderstood me, I don't mean 7—I beg pardon, what is that question again?

Exam. Taylor: Read the question.

(Question read.)

The Witness: Well, as an example——

By Mr. Brown:

Q. Suppose the Chicago price on the same day was for No. 2 yellow or better, cash price was 60 cents. Do I understand that you have been getting about 7 cents under that or about 53 cents delivered at the Morris elevator, 7 cents difference?

A. 8 cents. I would get about—you said 60 cents?

Q. Take 60 cents corn.

A. Yes.

Q. It has been around that?

A. I would get 52 delivered at the elevator.

Q. You would get 52 delivered at the elevator?

A. Yes, sir.

Q. Now, out of that 52 cents that you got at the elevator, did you have to pay for the trucking?

A. Oh, yes, sure, I would have to pay for that.

Q. So your net would be somewhere about 50 cents?

A. Somewhere there, yes.

Q. That you actually got after you paid for the trucking?

A. No, that—I am wrong there. That would be with everything paid. It would be 52 cents to me.

[fol. 1870] Q. 52 cents to you?

A. Yes.

Q. The shelling and the trucking would go in with it? That would be just about 8 cents a bushel under?

A. Under Chicago.

Q. The Chicago price net to you?
A. Yes, sir.

Mr. Brown: That is all.
Exam. Taylor: Is that all the cross examination of this witness? (No response.) Anything on redirect, Mr. Macaulay?
Mr. Macaulay: Nothing.
Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.
Mr. Macaulay: Mr. Finnegan.

O. W. FINNEGAN was sworn and testified as follows:

Direct examination.

By Mr. Macaulay:

Q. Will you state your name, please?
A. O. W. Finnegan.
Q. Where do you live, Mr. Finnegan?
A. Near Dwight.
Q. On a farm?
A. Yes, sir.
Q. Are you related, Mr. Finnegan, to Mr. James F. Finnegan?
[fol. 1871] A. James is a second-cousin of mine.
Q. How large a farm do you live on, Mr. Finnegan?
A. 240 acres.
Q. Do you operate that yourself?
A. Yes.
Q. How long have you lived on this farm?
A. 25 years.
Q. Have you operated any other farms besides this one farm?
A. No, I haven't.
Q. Have you had any experience of any kind in the grain business?
A. Well, some years ago, I did.
Q. State what experience you have had?

A. Well, I operated the Campus Grain Company at Campus and Cardiff for ten years.

Q. About when was that, Mr. Finnegan?

A. Well, I think I come in there in 1906.

Q. 1906 to about 1916, then?

A. I think so.

Q. In your operation of your own farm near Dwight, do you sell grain as it is grown on that farm?

A. Yes, sir.

Q. Did you ever have occasion, prior to 1934, to note the difference, the approximate difference between the price you received at the farm and the Chicago cash price of grain on the day of sale?

[fol. 1872] A. Will you state that again, please?

Exam. Taylor: Read the question.

(Question read.)

The Witness: Yes, I think I have noticed a difference.

By Mr. Macaulay:

Q. Do you have a sufficiently distinct recollection so that you would be able to state the approximate amount of that difference?

A. Well, I think the approximate amount would be——

Q. Just say yes or no.

Mr. Enoch: I want to get an objection in here at the right time.

Exam. Taylor: Objection noted.

By Mr. Macaulay:

Q. Just say yes or no whether you have such a recollection?

A. Well, I have.

Q. And what is that approximate difference?

Mr. Enoch: I object.

By Mr. Macaulay:

Q. What was that approximate difference?

Exam. Taylor: Objection noted on the record. Same ruling.

By Mr. Macaulay:

Q. Will you state that approximate difference?

A. Well, I would say about 4 cents.

Q. About 4 cents between the Chicago market and the price you receive on the farm?

A. Yes, I think so.

[fol. 1873] Q. Now, have you had occasion to note the difference in the price since 1934, difference between the Chicago price and the price you received?

A. The difference between the Chicago price and the price I received?

Q. On the farm for your grain.

Mr. Enoch: At what time are you talking about?

Mr. Macaulay: Subsequent to 1934.

Mr. Enoch: I think that——

Mr. Macaulay: Maybe I ought to have one preliminary question. I will withdraw that.

By Mr. Macaulay:

Q. Do you ever sell any grain to any of the river houses at Morris, Illinois?

A. Yes, I have.

Q. And when was the last time that you sold grain to the——

A. Well, I have sold grain to the river three time- this fall, this last fall.

Q. Do you know the approximate dates when you sold grain?

A. I sold September, October, November, I think.

Q. Do you know about the quantities each time?

A. I sold 4000 bushels the first time. I sold a thousand bushels the second time and 2600 bushels the third time.

Q. Now, do you recall what prices you received for each of these lots?

[fol. 1874] Q. Will you state what they are?

A. I received 68 cents for the first lot, I received, I think, 52 cents for the second lot and I received 52½ cents for the third lot.

Q. And is that for the entire—was that net to you?

A. No, sir, that wasn't net to me.

Q. What was the net price to you?

A. A cent and a half less on each bunch.

Q. A cent and a half less on each bunch. And what did that cent and a half represent?

A. It represented the trucking charges.

Q. Now, at the time of those sales, did you have any occasion to note the price at which grain was being sold on the Chicago cash market?

A. Well, I did. I watch it very close, but I couldn't tell offhand right now what the difference was. I think perhaps, maybe perhaps 7 or 8 cents per bushel.

Mr. Enoch: I move to strike that out.

By Exam. Taylor:

Q. Do you know that as a fact, Mr. Finnegan, or are you just——

A. Do I know it as a fact?

Q. Or are you just averaging or how are you arriving at that figure?

A. Well, perhaps it is a fact, but still I wouldn't state it as a fact on particular dates, but I know what the differ- [fol. 1875] ence is every day. I watch the market every day.

By Mr. Macaulay:

Q. About what is the difference, would you say, between——

Mr. Enoch: I object unless he tells us the day and what the price is at Morris and what it is at Chicago.

A. Well, I can't do that. Of course, if I got the market today, I could tell you today, but I didn't get the market today.

Exam. Taylor: He means the days that you sold those three lots that you referred to in September, October and November.

The Witness: I think the difference between the cash market and the price I got was about 7 cents.

By Mr. Macaulay:

Q. Did I understand you, then, that you are getting 3 cents a bushel less for your grain now than you did before 1934?

Mr. Enoch: I object. All that subject has been covered and covered more than it should have been, in my opinion.

Mr. Macaulay: I think so.

Exam. Taylor: Don't the figures speak for themselves, Mr. Macaulay? You have got the figure on that.

Mr. Macaulay: That is all.

Exam. Taylor: Any questions, Mr. Root?

Mr. Root: No, thank you.

Exam. Taylor: Cross examine. Any questions, Mr. Cole?

Mr. Cole: No, I haven't.

[fol. 1876] Exam. Taylor: Mr. Day?

Mr. Day: I have none.

Exam. Taylor: Mr. Enoch?

Mr. Enoch: I have none.

Exam. Taylor: Mr. Brown?

Mr. Brown: Yes, sir.

Cross-examination.

By Mr. Brown:

Q. Mr. Finnegan, to whom do you sell your grain for delivery at a waterfront elevator?

A. To whom do I sell it?

Q. Yes.

A. Well, in recent years I have sold it to Mr. Finnegan, James Finnegan, most of it, not all of it.

Q. How far is your farm from his elevator?

A. 24 miles.

Q. 24 miles?

A. Yes, sir.

Q. What is the town?

A. Dwight, Illinois.

Q. Are you connected with any elevator?

A. No, sir.

Q. When you receive a bid from Mr. Finnegan for delivery of corn at his elevator, do you arrange for that grain to be trucked to the elevator?

A. Yes, sir, invariably I do; not all of the time.

[fol. 1877] Q. Well, when you do that, you make delivery, you get your money for the corn, you are through with it, aren't you?

A. Yes, sir.

Q. You have no more connection with that grain?

A. No, sir.

Q. All right. As I understood you, the difference that you received for your grain and the Chicago cash price,

say, about the same day, say, for No. 2 yellow corn or better, would be 7 cents a bushel?

A. Approximately.

Q. In other words, if it was 60 cents a bushel Chicago cash price on a range, you would get it about 53 cents?

A. About that.

Q. Now, for that 53 cents, do you have to deliver at Mr. Finnegan's elevator on the river?

A. For that 53 cents?

Q. Yes, 53 cents that he bids you, as I understand it, you have to make delivery of corn to the river?

A. Well, sometimes I do it that way and sometimes the other way. Sometimes I pay for the hauling and sometimes Mr. Finnegan pays for the hauling, and then the price is different.

Q. All right, now, let's take that first. There is a deal between you whereby you are going to deliver the corn to the elevator.

A. Yes, sir.

[fol. 1878] Q. All right, now. That would be an expense to you, wouldn't it?

A. Yes, sir.

Q. What price would you receive at his elevator for the delivery? You have got to deliver him certain corn. What price do you get?

A. Well, I think I would get about 54½ cents, if he paid for the hauling—no, if I pay for the hauling, I would get about 54½ cents.

Q. And that would be 5½. Now, out of that 5½ cents, you pay for the shelling and the hauling down to the elevator?

A. I pay for it?

Q. Yes.

A. No, he paid for the hauling.

Q. What I want to get is, where does this 7 cents comes in? If you make delivery to his elevator, paying for the hauling from your farm to his elevator, is your net difference the 7 cents a bushel?

A. Not for the shelling and the hauling. No, it isn't for the shelling and the hauling. All the expense I have on my corn is the cent for shelling and a cent and a half for hauling it.

Q. That is 2½ cents? A cent and a half a bushel for hauling and a cent for shelling?

A. Yes, sir.

Q. All right, now, let's leave the shelling out. Where does the 7 cent difference come in between the Chicago price [fol. 1879] and what you get? Is that where Mr. Finnegan buys it on your farm and he pays for the hauling from your farm to the elevator? Is that where you get the 7 cents?

A. I suppose that is his expense. I suppose he figures the margin of the freight rate between Morris and wherever the grain goes and what other expense there is on it.

Q. All right, let's put it this way. If he bids you a certain price and you make delivery to his elevator, you do the hauling then or hire it, will your net then be about 5½ difference?

A. I think so.

Q. The 5½ cents and the cent and a half making about the 7?

A. I think so.

Q. If he takes it from your farm, your net is just about the same, because you don't have to pay for the hauling; instead of being 7 cents, it is really 5½ cents, isn't it?

A. I suppose.

Q. You are not a member of these Allied Elevator or anything else?

A. No, sir.

Q. Just a farmer selling your own grain?

A. Just a farmer selling my own grain.

Exam. Taylor: Is that all from this witness? Anything on redirect? Anything on redirect, Mr. Macaulay?

Mr. Macaulay: No, nothing here.

Mr. Root. May I ask one question?

[fol. 1880] Exam. Taylor: Yes, Mr. Root.

Redirect examination.

By Mr. Root:

Q. Mr. Finnegan, when you were at Campus, Illinois, how much did you say the difference was between the amount you could pay to your farm patrons and the Chicago cash market on any particular day?

Mr. Enoch: I object to that; same objection.

Exam. Taylor: Same ruling.

By Mr. Root:

Q. Go right ahead and answer it. Tell me what that difference was.

A. When I was in Campus, we had a 5½ cent rate at one station and 6 cent rate at the other.

Q. Yes.

A. Of course, I haven't kept step with this freight rate change all the way up, but now the freight rate in our locality has been almost twice that much.

Q. I asked you what you paid when you were in Campus?

A. I bought grain on a margin of about three cents and a half a bushel. That meant on a six cent rate. Of course, it was all hauled in by the farmers themselves, and that is all we had to figure on, our margin of profit.

Q. And how much did it cost you? Is that 5½ and 6 cent in addition to the 3½?

A. In addition to the 3½ cents?

Q. The 3½ cents you took out for your operating margin.

[fol. 1881] A. That was the freight rate, it was 6 cents a hundred or 5½ cents a hundred. I don't know how much it figures out per bushel.

Q. About 3½ cents a bushel. How much did you take out for your expense of elevator operation and profit?

A. It took a cent and a half.

Q. For the profit or the whole thing?

A. Profit.

Q. How much was your expenses then, of operating?

A. About $150 a month.

Q. Well, you took off between 6 and 7 cents a bushel, then? Is that under the Chicago market?

A. 6 or 7 cents a bushel? No, sir, we didn't take off that much.

Q. Can you just make one direct statement as to how much under the Chicago cash market you paid your customers in Campus when operating that elevator back during those years?

Mr. Enoch: I object to that.

Mr. Root: I just want to get one statement.

By Exam. Taylor:

Q. Do you recall, Mr. Witness? Do you recall that far back?

A. I will let her read it.
Q. Is it hazy to you?
A. I want her to read it.
Q. If it is hazy, it wouldn't do any good.
A. It isn't hazy, if I can just get it straightened out, what [fol. 1882] you want me to explain.

By Mr. Root:

Q. Supposing on any particular day the Chicago cash grain market was 55 cents a bushel.
A. Yes.
Q. And I came in as a farmer and said, "Mr. Finnegan, I have a thousand bushels of corn to sell and I will deliver it to the elevator, No. 2 corn?
A. Yes, sir.
Q. When you were at Campus, now. How much would you have paid me for No. 2 corn, assuming the Chicago price was 55 cents?

Mr. Enoch: I object.

The Witness: I would pay you 49 cents at that time.

Exam. Taylor: Objection noted.

Mr. Enoch: I move that answer be stricken.

Exam. Taylor: The objection is noted on the record. Is that all from this witness?

Mr. Macaulay: That is all.

Exam. Taylor: Mr. Brown? Witness excused.

(Witness excused.)

Exam. Taylor: We will take a five minute recess now.

(Recess taken.)

Exam. Taylor: Let's come to order. Mr. Macaulay, was that all?

Mr. Macaulay: I have noted one matter in connection with the Board of Trade's exhibit 38. I was wondering [fol. 1883] whether Mr. Benson would step on the stand just a minute so I might ask him a matter of clarification of some of the rates. It won't take two minutes.

S. H. Benson, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Macaulay:

Q. Mr. Benson, referring to exhibit 19, page 7——

Mr. Brown: You said 38.

Mr. Macaulay: There is one question in each of these.

By Mr. Macaulay:

Q. Which is receipts of grain at Chicago in bushels for 1938, I notice that the lake is defined from Duluth. Could you state whether or not the Board of Trade records show any receipts from any other lake ports in 1938 other than Duluth?

Mr. Brown: I didn't get that question.

(Question read.)

The Witness: This record would indicate that receipts via lake were from Duluth only.

Mr. Macaulay: All right.

By Mr. Brown:

Q. For that year?

A. 1938.

By Mr. Macaulay:

Q. Now, referring to exhibit 38, which was the one you put in the other day, I notice on page 1 thereof in the statement covering 1939 receipts are Chicago, there is no [fol. 1884] break-up of the receipts by lake but merely the statement "by lake." Are you able to state from what ports that grain was received?

A. I was informed that that also was from Duluth, although there is no specific reference thereto; head of the lakes.

Q. So that in 1939, the receipts as shown by lake may account for any one of a number of points shown in former years in your exhibit No. 19?

Mr. Enoch: Wait a minute.

The Witness: No, I was told by the compiler of the records that those receipts came from the head of the lakes;

Duluth and Fort William; barley from Fort William. Our attention was directed to the fact that he made no specific reference to the origin. I was told that in a general way, it came from the head of the lakes.

[fol. 1885] Mr. Macaulay: Mr. Examiner, inasmuch as in all years prior to 1938, there was a definite breakdown of the place from which the grain arrived, I believe that we ought to have that information for 1938 and 1939, if it is available. The Board of Trade have probably the only official complete records there are.

The Witness: 1938 is complete. It shows Duluth.

By Mr. Macaulay:

Q. But 1939, you have changed the method of setting that up?

A. I personally don't compile those figures. The information I did get from the compiler was that it shows from the Head of the Lakes, Duluth. The barley came from Fort William.

Q. If it was from any other points, would you so advise me?

A. Yes.

Q. Other than Duluth and Forth William?

A. I will ask them again and be as specific as possible.

By Exam. Taylor:

Q. Will you furnish that in ten days or can you furnish it tomorrow?

A. I will furnish it tomorrow.

Mr. Belnap: Can I ask Mr. Benson a few general questions concerning tariff references for which Mr. Brown gave tariff references, Toledo and Buffalo, while he is available?

Exam. Taylor: All right.

By Mr. Belnap:

Q. The tariffs came from the tariff files at the Chicago Board of Trade?

[fol. 1886] A. Yes, sir.

Q. And you have given those tariffs a general examination to know the general contents thereof?

A. Yes, sir.

Q. Could you tell me as to whether or not the transit tariff at Toledo and the transit tariff at Buffalo, the one being Jones' ICC No. 3240 and the other Pennsylvania Railroad 2065, are substantially the same as the transit tariff at Chicago in respect of the recording of tonnage received inbound by boat and inbound by rail, method of recording freight bills or boat manifests, the cancellation of tonnage against local disposition or shipment outbound by rail or by boat, the time limit within which these things must be done, the matter of the shipper's certificate that he has compiled with all the rules and the general rules as to the determination of legal rates applicable on shipments on which transit privilege is claimed?

Mr. Enoch: Just a minute, now. Off the record.

Exam. Taylor: Yes.

(Discussion outside the record.)

By Mr. Belnap:

Q. Did you answer it, Mr. Benson?

A. I would say that they are identical with respect to those provisions.

Q. Would you make that answer generally to the various provisions in the tariff that go to policing the transit and the rate applications?

[fol. 1887] A. That is true to all tariffs that affect prices east of Chicago.

Q. Yes. And these are the tariffs that would be referred to in connection with the ex-lake rates from Toledo and from Buffalo?

A. Yes, sir.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness. Mr. Macaulay, have you completed now?

Mr. Macaulay: Yes, I have, your Honor.

Exam. Taylor: Mr. Belnap, have you a witness you wish to call?

Mr. Belnap: I have a witness who is readq. Mr. Oliphant

Exam. Taylor: Off the record, we will number the exhibits starting with No. 63.

(Exhibits 63 to 66, both inclusive, Witness Oliphant, marked for identification.)

Exam. Taylor: All right, now, have they all been distributed?

Mr. Belnap: Yes, sir.

Exam. Taylor: Now, are you ready to proceed, Mr. Belnap?

Mr. Belnap: Yes.

[fol. 1888] W. G. OLIPHANT, was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Please state your name.

A. My name is W. G. Oliphant. I am employed as Assistant General Freight Agent in the Traffic Department of the Inland Waterways Corporation, which operates the Federal Barge Lines. My office address is 211 Camp Street, New Orleans.

Q. What has been your traffic experience, Mr. Oliphant?

A. I have since 1922 been in the employ of the Inland Waterways Corporation in various capacities, among which included chief clerk in the office of the local freight agent at New Orleans, to and including my present position in the traffic department. Prior to my affiliation with the Inland Waterways Corporation, I was employed by a subsidiary line of the Gulf Coast Lines at New Orleans, in various clerical capacities, among which included local freight agent. My transportation experience extends over a period of approximately 22 years.

Q. Are you familiar with the issues in this proceeding?

A. I am familiar with the issues in this proceeding.

Q. Now, Mr. Oliphant have you prepared a series of exhibits which you desire to introduce at this time, together with an oral explanation of those exhibits?

A. I have.

Q. Will you please proceed to do that.

A. I am appearing here in behalf of the Inland Water- [fol. 1889] ways Corporation, hereinafter called the Federal Barge Lines, as a protestant, in opposition to the restrictions contained in the suspended schedules against ex-river grain. It will be my purpose to present facts to the

Commission concerning these restrictions and the ultimate effect, should they become operative, upon the Federal or any other water carrier now participating in the transportation of grain between the river ports.

Our position in this case is that the local rates from St. Louis, Missouri, East St. Louis, Illinois, Peoria, Illinois, and Chicago, Illinois, to destinations named in the suspended schedules which are made applicable to ex-barge grain transported on rates not on file with the Commission, and discharged at the river ports, are excessive to the extent that they exceed the rates contemporaneously provided for application to ex-lake grain transported on rates not on file with an regulatory body, and on ex-rail grain from the same proportional rate points to the same destinations. It is also our contention that the application of higher rates to ex-barge traffic than to ex-rail traffic is unjustly discriminatory and unduly prejudices the Federal Barge Lines and the traffic in which it participates.

Q. In respect to that matter do you also complain of the improper relationship as compared with ex-lake grain?

A. Yes.

Q. Proceed.

[fol. 1890] A. For the purpose of identification, I will briefly describe the Federal Barge Lines.

It is a common carrier by water operating water carriage facilities between various ports on the upper Mississippi River from the Twin Cities, Minneapolis and St. Paul, Minnesota, to St. Louis, Missouri, and East St. Louis, Illinois; on the lower Mississippi River from St. Louis, Missouri, and East St. Louis, Illinois, to New Orleans; and from New Orleans to Mobile, Alabama, and thence to Holt and Port Birmingham, Alabama, formerly known as Birmingport, Alabama, via the Industrial Canal, the Mississippi Sound, the Mobile, Tombigbee, Warrior and Black Warrior Rivers; and on the Illinois and Chicago Rivers, from its confluence with the Mississippi River to Chicago, Illinois. On June 7, 1935, service was inaugurated on the Missouri River, from its confluence with the Mississippi River to Kansas City, Missouri. With the exception of Cairo, Illinois, the Federal Barge Lines does not serve any port on the Ohio River, as provision being made in the law for its operation on that stream.

Since its inauguration the Federal Barge Lines has engaged rather extensively in the transportation of grain,

although the tonnage transported by it in any year has been insignificant compared with the tonnages of grain transported by competing all-rail routes. Originally, the greater portion of the grain transported by the Federal Barge [fol. 1891] Lines was destined to New Orleans primarily with a view to water movement beyond. However, in June, 1931, service of the Federal Barge Lines was extended to the Illinois River, and when this service commenced, the Federal Barge Lines engaged in the transportation of grain on this stream to the Illinois River ports. Grain so handled is available for reshipment from the Illinois River ports to North Atlantic and Canadian ports principally by rail transportation.

Q. Mr. Oliphant, when you first extended Federal service to Illinois, it only went to Peoria, did it?

A. Yes.

Q. That is 1931?

A. That is right.

Q. Do you recall what year it was that the service was extended on to Chicago?

A. I am not so certain about this but I think it was in 1932. I can supply that accurately, though; give it for the record tomorrow.

Q. It was some time after you came to Peoria but still quite a few years ago?

A. That is right.

Q. That is sufficient.

Mr. Enoch: Are you referring to business originating at Chicago?

Mr. Belnap: I am referring to extension of service into [fol. 1892] Chicago.

The Witness: Beyond Peoria into Chicago.

Mr. Belnap: Service of the Federal Barge Lines.

Mr. Enoch: Inbound and outbound? I thought you were talking about grain?

Mr. Belnap: No, I am talking about service of the carrier.

The Witness: In support of the statement concerning the participation of the Federal Barge Lines in the transportation of grain, I now introduce Exhibit No. 63, which is a statement consisting of one page, setting forth the grain tonnages of the Federal Barge Lines for the years 1933 to 1939, inclusive, transported on unfiled rates.

I desire to make some corrections on this exhibit, namely, opposite the third origin, Cora Island, Missouri, under the column 1936, the figure 28 should be changed to read 280, opposite the commodity corn. And in the fourth origin, Davenport, Iowa, the figure 14 under the column 1934 should be changed to 140. That affects the grand total and the figure 1964 in the grand total, opposite St. Louis, under the year 1934, should be changed to read 2090. And under the column 1936 opposite the grand total for St. Louis, the figure should be changed from 10836 to 11088.

The basis employed by the Federal Barge Lines in the establishment of rates on grain in this territory is 2 mills per ton per mile, plussed by the increases provided in Ex [fol. 1893] Parte 123 determined from the use of mileages published and on file with the Interstate Commerce Commission in Federal Barge Lines' Mileage Circular ICC No. 82, a copy of which is now introduced as Exhibit No. 65.

By Mr. Belnap:

Q. The miles shown in that exhibit and the miles which you use in determining your rates are water miles, are they not?

A. That is correct. Four and a quarter cents per hundred is observed as a minimum rate, except at Chicago where the minimum rate increased by reason of legal towing charges, which are added to the basic minimum rate in different amount, depending upon the weight used or the minimum weights applicable to those rates.

Rates established on this basis apply free in barge at port of loading and port of discharge. That is, the rates do not include any expense of loading into or discharge from the barge. Likewise, any expense necessary to bring the grain to the river port for loading, and any expense necessary to transport the grain from the river front after discharge, is in addition to the line rates.

Minimum weights per shipment on these rates range from 140 tons to 1500 tons, depending upon the port at which the grain is loaded and discharged. The 140 ton minimum is the base minimum, and is applied only from and to regular ports of call, which ports are shown in our grain [fol. 1894] tariff No. 12-B which is Exhibit No. 66.

From irregular ports of call, that is, ports from and to which regular service is not maintained, a 300 ton mini-

mum prevails. The purpose of the 300 ton minimum at irregular ports is to assure sufficient tonnage to compensate the Federal Barge Lines for the additional stop necessary for setting out of barges at such irregular ports of call. At Chicago by reason of the cost of towing, which differs depending upon the size of the equipment to be towed, the rates vary with varying minima. The purpose of this method of establishing rates is to place all of the elevators at the Chicago Terminal on the same basis.

The formula which I have just described for determining the rates on bulk grain has been in use for quite a number of years, and although the rates are not filed with the Interstate Commerce Commission, nevertheless, changes are made in these unfiled tariffs only upon notice to the general public, and the rates are assessed as published. In other words, the rates are treated the same as if we were required to publish and file them with some regulatory body. The tariffs are printed and distributed in the same manner as is required by law in connection with our filed tariffs.

Q. Except that you don't send them to the Interstate Commerce Commission?

A. That is correct. And we do that for information only.

[fol. 1895] Q. You do send them for information?

A. Oh, yes, we send all of our all-water tariffs to the Commission, simply as a matter of information to the Commission.

By Mr. Enoch:

Q. You could change the rate on one day's notice, couldn't you?

A. That is true, but those changes are handled in the same manner as short-notice changes that are made by rail lines are handled.

Q. Whose permission do you ask?

A. We don't have to ask any permission.

Q. They aren't handled in the same manner?

A. By that I mean that the distribution and the publication of the supplements containing those rates are handled in the same manner.

By providing rates on a uniform mileage basis such as the basis here described, each port is given the benefit of its location. The rates so made do not include the service

of placing the grain into the barges or removing the grain therefrom, and it is commonly referred to as a free on-and-off basis.

The rates referred to in the suspended schedules as being published in Item No. 3662-C of F.B.L. Tariff No. 31-J, ICC No. 148, are constructed by use of the same basic method of determining rates for line service, that is, the 2 mills per ton per water mile for line haul, and the result is [fol. 1896] plussed by handling charges of 2½ cents per hundredweight, at both the port of receipt and the port of discharge and the result is increased by the increase as provided by the Commission in Ex Parte 123. The present transfer charge named in tariff 12-B, consequently, is 39 cents per ton. However, at the time that these rates published in Item 3662-C of Tariff 31-J were made, the 2½ cent per hundredweight was used or 50 cents a ton rather than 39 cents a ton.

By Exam. Taylor:

Q. In connection with what minimum?

A. Various minimums, depending upon the port. If the shipment was destined to Peoria, the minimum rate would be based on the 140 ton. If it went to Chicago, you would have three mimimums, see; 350, a thousand tons, 1,500 tons.

By Mr. Belnap:

Q. Now, are you speaking of——

By Exam. Taylor:

Q. With different rates?

A. The rates are different, yes.

By Mr. Belnap:

Q. Are you speaking about the grain rates published in your ICC No. 148?

A. That is correct. I want to bring out this fact, that when we first published those rates, a uniform handling charge was used at the origin port and at the destination ports, 2½ cents per hundred. That was added to the basic rate.

Q. Have you got that tariff with you, Mr. Oliphant?

A. No, I don't have it with me.

By Exam. Taylor:

Q. That is on bulk grain or package grain?

[fol. 1897] A. That tariff applies on package grain.

By Mr. Belnap:

Q. Are you sure you are correct about those minimum weights of 140 tons, under those rates?

A. No, but I thought maybe the Examiner might have the impression that we were using the handling charge as applied to the various minimums. That is not so. The handling charge is simply added to the rate. 2½ cents per hundredweight is included in the rate at origin and destination. After you apply the rate, then it goes to the minimum weight, but I am talking simply about the construction of this rate.

Q. When you answered the Examiner about 140, you were talking about your unfiled rates?

A. That is correct, not the rates in 31-J; those rates are different.

Q. But the Examiner asked you about those rates, did you not, Mr. Examiner?

Exam. Taylor: Yes.

The Witness: Those rates apply on carload quantities, those rates in 31-J.

By Mr. Belnap:

Q. The same minimum applies in connection with the rail rate, same commodity?

A. That is right. This method is followed because of the fact that these rates are applicable from in cars on docks at origin port to in cars on docks at destination port.

Exhibit 64, which I now introduce, is a statement of two [fol. 1898] pages showing the rates assessed by the Federal Barge Lines on grain from certain ports named to other ports of destination shown in the exhibit.

I desire here to make a correction on this exhibit for the purpose of eliminating any confusion. There is a No. 1 reference mark shown in the column captioned "Handling charges at origin and/or destination ports." That should be changed to the capital letter A, so as not to confuse it with the reference mark 1 shown after the column "Application." This requires a similar change on page 2 of

the exhibit, the very first line, where the reference mark 1 is explained, says, "Does not include switching charges," that reference mark should be changed to A likewise. On page 2 under the explanation of the application, opposite the No. 3, the word "from" should be changed to "to." "Applies to elevators named in application 1, above."

By Exam. Taylor:

Q. Mr. Oliphant, may I ask whether the rates shown in Column C of Exhibit 64, for example, from Burlington, Iowa, to Chicago, 10.80, is that in cents per hundred pounds?

A. Yes, sir, that is shown under that note at the heading of the exhibits, "Rates and charges are in cents per hundred pounds."

By Mr. Belnap:

Q. All of these rates apply for an all-water movement from port to port, do they not?

A. That is correct.

Q. That is the ones you are speaking about now on the [fol. 1899] column headed (c)?

A. Yes, sir. The exhibit also shows the incidental charges to be added to the line-haul rates for terminal services at the ports where such services are performed by the Federal Barge Lines. Rates are shown on the exhibit from and to the same stations shown on the tonnage exhibit, No. 63, except the station Kampville, Illinois, is not shown on the rate exhibit but it is shown on the tonnage exhibit.

It will be recalled that in my previous discussion of the Federal Barge Lines' rates on grain, reference was made to a free on-and-off application. By this is meant, that the rates are made strictly on a line-haul basis, without consideration being given to any terminal services, the expense of such additional services, when performed by the Federal Barge Lines, is in addition to the so-called "free on-and-off" rates.

I would like to now introduce Exhibit No. 66, which contains the bulk grain rates of the Federal Barge Lines applicable for all-water movement and published on the basis that I have just described.

Q. Before you leave 64, Mr. Oliphant, in a column headed (d), you show handling charges.

A. Handling charges are applicable where the services are performed at the elevators.

Q. Does that mean that the Federal Barge Lines holds itself out by the publication of these charges to perform [fol. 1900] with its own facilities, if the shipper asks it, a transfer of grain from cars to barges at point of origin and from barges to cars at point of destination?

A. Yes, and for that service a charge of 2¾ cents per hundred pounds is assessed. Now, the charge to Chicago, because all of the grain that we have handled has gone through elevators, we haven't used that 2¾ cents.

Q. Now, some of the charges there in that column are 4.75 and some are 5.50.

A. Well, the 4.75 charge appears opposite Chicago, where the 2¾ cents would be applied if the Federal Barge Lines transferred at the origin, and there is a 2 cent charge at Chicago which is made up of a cent and a half elevation and one-half cent trimming.

Q. Now, if I understand that column, wherever the amount is shown as 5.5 or 5.50, it is simply twice the 2¾ cent charge which the Federal Barge Lines publishes when it performs the service?

A. That is right.

Q. However, when you show 4.75——

A. Opposite Chicago.

Q. That is 2¾ cents to the Federal Barge Lines at origin?

A. That is correct.

Q. Plus a charge which the Federal Barge has no connection with at destination?

[fol. 1901] A. That is right.

Q. That is the trimming charge and a charge by the public elevator?

A. That is right.

Q. Do you mean to show on this exhibit that on all the tonnage which you handled as shown by Exhibit 63, these charges were paid?

A. Yes.

Q. Well, wait——

A. No, I wouldn't say that all of the tonnage there on 63, because I don't know how much of that tonnage was transferred by the Federal Barge Lines facility or how much of it was transferred through some elevator.

Q. So you answer to my question is no?
A. No.
Q. You are simply showing in your exhibit what the handling charge would be if the Federal Barge performed the service?
A. Yes.

Mr. Brown: That is on bulk grain?

By Mr. Belnap:

Q. This is all about bulk grain, is it not, Mr. Oliphant?
A. Yes, sir.
Q. Isn't it true that most of the origins shown on the exhibit, as well as the destination at St. Louis, the Federal Barge Lines has not performed the handling service of [fol. 1902] getting the grain into the barges at origin or getting it out of barges at destination?
A. Well, as to St. Louis, I would say most of the grain is handled through the elevator.
Q. That is destination. Now, we have taken care of both destinations.
A. That is right.
Q. How about the origins? Isn't it true at most of these origins that is put into your barge without the Federal Barge Line having anything to do with that service?
A. No, my understanding is that some of that grain has been transferred by us at Kansas City.
Q. And you also did transfer some at Peoria some years ago, did you not?
A. Yes, I think so.
Q. But that is an exception, an unusual circumstance?
A. It is.
Q. And ordinarily the shipper arranges himself for passing his grain through an elevator so it can be loaded into your barges?
A. That is true, and particularly so as to the Illinois River ports.
Q. But if you are called upon to do it, you hold yourself out to provide a facility for taking it out of his equipment and putting it into your barges?
A. Yes, sir, that is the purpose of the charge we published.

Record.

[fol. 1903] Mr. Enoch: Well, we assume that inasmuch as you put these charges in there, that they are reasonable for the services they purport to cover.

Mr. Belnap: I think that would be a fair assumption.

Mr. Enoch: I am talking about the handling charges.

Mr. Belnap: I think that is a fair assumption.

The Witness: In connection with Exhibit No.——

By Mr. Belnap:

Q. As to that, however, let me ask you this: Mr. Oliphant, when you do handle this grain, you provide special equipment, clam-shell or something like that to handle it, do you not?

A. I am going to describe that in just a little while.

Q. All right, we will wait until you get to it.

A. In connection with Exhibit No. 66, I wanted to direct attention to the rates being subject to Item No. 60 of the tariff, which states specifically that the rates do not include cost of elevation, loading of freight into barges, unloading freight from barges, switching, demurrage, drayage, wharfage, et cetera, and also to Item 145, where the handling charges are specifically published, where such handling services are performed by the Federal Barge Lines.

I desire also to call attention to Item No. 160, providing for the detention charges on barges of the Federal Barge Lines.

For the purpose of this proceeding, it might be well at this point that I explain for the record the general mechan-
[fol. 1904] ical services involving the handling of bulk grain on the line-haul rates of the Federal Barge Lines. Therefore, I will endeavor to describe generally the operations at Kansas City where grain would originate, in so far as the Barge Line is concerned, at St. Louis, where it may originate or terminate so far as our service is concerned, and at Peoria and Chicago, where the Barge Line's hall would terminate on grain destined beyond.

First of all, bulk grain transported on our unfiled rates is subject to a booking requirement contained in our tariff 12-B, which is Exhibit No. 66. Prior booking for a fixed amount and a definite time when the freight will be ready for forwarding from point of origin must be arranged with the traffic manager of the Federal Barge Lines. When this requirement has been complied with, the Federal Barge

Lines will place the empty barge for grain loading at the elevator at Kansas City, where the loading of the grain is done through the elevator and under the supervision of the elevator operator.

The purpose of this booking requirement is to permit the supervision of the empty equipment so as to leave as much flexibility in the movement of these empty barges and provide, at the same time, an economical handling for them. In other words, when we know that a certain number of barges or that a barge is going to be required at a port and that traffic is booked, why, it permits the placing of that empty barge or the dropping off of that barge in one of the [fol. 1905] regular tows and minimizes the cost of operation to an extent. The same thing applies when the latest barge is ready for taking away from the port where it was loaded.

Q. What is the capacity of your barges?

A. They run in various capacities. We have about 227 barges that are used on the Mississippi section. By Mississippi section, I am including in there the Illinois as well as the Missouri Rivers. And we have about 51 Warrior River type barges which are used on the Alabama section. The Warrior type barges are interchangeable on the upper Mississippi. They are a smaller type barge. The Mississippi barges generally run from about 1,800 tons to 2,100 tons, 2,125 tons.

Q. And your tows with motor barges will run up to how many barges, on occasion?

A. We have had as high as nine barges in a tow.

Q. Loaded barges?

A. Yes. The barges that were in that nine-barge tow ran around 1,500 tons to the barge.

By Mr. Brown:

Q. Northbound?

A. Yes.

By Mr. Belnap:

Q. When you speak about tonnage, you are not talking about exclusively grain, are you, Mr. Oliphant?

A. When I speak of this nine-barge tow and 1,500 tons to the barge, I am not confining it to grain, no.

Q. You have all sorts of commodities?

[fol. 1906] A. That is miscellaneous commodities. Grain has been transferred at Kansas City, Missouri, direct from cars into barges by means of a hopper constructed of wood to which a gravity chute of similar construction is attached. This latter service is performed by the Barge Line, and a charge of 39 cents per ton at Kansas City is assessed in addition to the line rates.

Q. Every place else it is 50 cents a ton or 50 cents a ton plus Ex Parte 123 increases?

A. 55 cents a ton.

Q. When that barge is loaded, is there bill of lading issued to the shipper?

A. Yes, the uniform bill of lading, by that I mean the standard form that is reproduced in the Consolidated Classification is used by us, yes.

Q. Who executes that bill of lading?

A. The shipper executes it, our agent signs it, and when our—when it is traffic loaded at a non-agency port, the bill of lading is sent to the nearest agency port, just in the same manner that the rail lines handle their non-agency stations and the agent at the closest agency point signs the bill of lading.

Q. However, you place a barge for grain loading before you have any written document relating the shipment at all, do you not, containing an order for a barge?

A. Other than the booking requirement. We will place [fol. 1907] a barge without any other document than the booking requirement.

Q. Proceed, please.

A. After this barge is loaded, and if St. Louis happens to be the port of discharge, the barge is placed at an elevator, which is equipped with a marine leg. I think there is only one of such elevators capable of handling that traffic at St. Louis. In other words, there is only one with a marine leg. This marine leg is lowered into the barge and the grain sucked in through the elevator, and transfer into cars may be made through this facility. Unloading from cars into barges at St. Louis may also be accomplished through the same facility, and by use of a similar marine leg.

At Peoria, Illinois, the grain may be discharged through the elevator in the manner just described for St. Louis, or it may be handled through our bulk terminal by means of a clamshell bucket. This latter operation consists of lowering a steam shovel into the barge; the grain picked up

by this method is then dumped into a constructed hopper, where it is fed by gravity into rail equipment. There is a charge of 2¾ cents per hundred weight for such services. This method of transfer from barge to cars was first successfully used at Memphis, Tennessee. Grain dealers at that point have expressed no dissatisfaction with this method of unloading. In fact, the method has proven quite satisfactory.

Q. Mr. Oliphant, when that method is used, the discharge [fol. 1908] is into a car placed alongside the barge at your warehouse?

A. Yes. There is a tarpaulin spread over the space from the barge to the car, or to the hopper where this grain is poured into from the barge. The steam-shovel is loaded into the barge, picks up this grain and any of it that may sift through the shovel drops into this apron. After the barge is completely discharged, then the grain that may have flown through the shovel is picked up from this apron and put through this hopper into the cars.

Mr. Enoch: I would like to ask right here if this is all preliminary to something that is going to burst on us all of a sudden that isn't—what has this got to do with the case?

Mr. Belnap: This is a description of water service.

The Witness: I think the Commission in interested in knowing how we handle our traffic.

Mr. Belnap: I thought you had some question in mind as to whether he wasn't recognized to be a common carrier, couldn't have these rates apply, some jurisdiction of the Commission as to whether the man was a common carrier by water, and I think that that would have to be established by evidence.

Mr. Enoch: The statute says that the Federal Barge Lines is a common carrier and I don't think we need any evidence on that.

Mr. Belnap: Some of you fellows might overrule it some time.

[fol. 1909] By Mr. Belnap:

Q. Mr. Oliphant, your terminals are all served by railroad tracks, are they not, connecting with the various truck lines serving the point?

A. Generally speaking, I would say that is true. There may be some exception on the Illinois River. But if by

terminal you mean a place where we maintain an agency, I would say yes. They are all served by rail connections.

Q. And that would be true at Kansas City, St. Louis, Peoria?

A. Chicago.

Q. Chicago?

A. Yes.

Q. And if the grain was to move beyond by car, the car would be ordered placed alongside the barge where that sort of a transfer could be made?

Mr. Enoch: What point, now? What point?

Mr. Belnap: Peoria. He has just described Peoria.

The Witness: Well, at Peoria, if you want to use that as an illustration——

By Mr. Belnap:

Q. Yes.

A. At most times it is not necessary to we order the car. Our service is to and from Peoria, and in a great percentage of the cases, we have empties there which we have, take freight out of the cars and place it in our barges for outbound movement and we may move that car, if it is in proper condition for grain, to transfer the grain from that barge [fol. 1910] into the car. Otherwise, we would order a car.

Q. Whose rails serve your terminal at Peoria?

A. The Illinois Central and the—I think the T. P. W. gets in there and I believe the Illinois Central, direct.

Mr. Enoch: I don't like to interrupt you any more, but I would like to have you state what the purpose of all this is.

Mr. Belnap: I am describing the carrier's operations.

Mr. Enoch: Just a matter of description?

Mr. Belnap: That is all.

Mr. Enoch: You are not going to raise any point about this that we are being lured into a sense of security upon by the easy way in which this goes in?

Mr. Belnap: Thanks for the compliment. But I think not. I expect to point out my tariff references as we go along.

Mr. Cole: I thought that was coming.

By Exam. Taylor:

Q. Well, at Chicago you don't handle grain?

A. I was just coming to that. At Chicago, the grain is

all handled through elevators and under the supervision of elevator operators.

By Mr. Belnap:

Q. Those are special elevators, or do you know as to that?

A. I don't know, but I think they are.

Q. I will cover it by someone else.

A. Where elevators are used for discharge or loading of barges, the expense thereof is in addition to the line rates, [fol. 1911] borne by the shipper and paid to the elevator operator. In the schedules under suspension the carriers are attempting to establish proportional rates on grain so restricted as to make them inapplicable on water-borne grain unless the rates of the water carrier are on file with the Interstate Commerce Commission.

Q. By "water-borne," you mean on the river there, do you not?

A. Yes, where I refer to water-borne traffic, I refer to the operation on the river.

Such a publication, we believe, is illegal. This opinion is supported by the Commission's decision in Washington Coal Producers Association vs. U. P. R. R. Company, 129 ICC 490, at page 500, where the Commission stated that under the provisions of paragraph 13 (c) of Section 6 of the Act, they are authorized to prescribe proportional rates to ports applicable to traffic moving beyond by water, and such rates may differ from the corresponding local rates. The Federal Barge Lines is a common carrier in every respect of the word, even when consideration is given to the unpublished port-to-port rates. Consequently, we believe that the proportional rates under suspension are of the character contemplated by paragraph 13 (c) of Section 6 of the Act.

Q. Proportional rates which were held in effect by reason of the suspension which you believe to be of that character, is that true?

A. That is right. Furthermore, these same rail carriers [fol. 1912] in the schedules under suspension propose the application of these same proportional rates to ex-lake grain in connection with rates of water carriers who are not common carriers in the same sense as the carriers on the inland streams. Such a publication, while lawful from a tariff standpoint, nevertheless, does not provide for pro-

portionals of the character recognized in paragraph 13 (c) of Section 6 of the Act, as stated in 174 ICC 459, page 471, Cast Iron Pipe and Fittings, also Allenwood Steel vs. Alabama Great Southern Railroad Company, 190 ICC No. 3, page 11.

Under Section 500 of the Transportation Act of 1920 it is stated that it is the policy of Congress to promote, encourage, and develop inland waterway transportation facilities in connection with the commerce of the United States. This policy was reiterated in Section 3 of the Inland Waterways Corporation Act, as amended. Yet, in spite of this declared policy of Congress, the rail carriers, parties to the suspended schedules, by reason of the fact that Congress made no provision for placing the port-to-port rates of the inland water carriers under the jurisdiction of any regulatory body, are attempting to destroy what Congress sought to preserve and expand to a point where private persons, companies, or corporations would be ready and willing to engage in common-carrier service on such streams.

The Federal Barge Lines, in I&S Docket No. 4280, reported in 225 ICC 62, Proportional Grain Between Federal [fol. 1913] Barge Lines Ports, was a respondent and appeared in justification of an attempt on its part to file with the Interstate Commerce Commission port-to-port rates on grain. The Federal Barge Lines in this proceeding was defending a tariff containing the port-to-port rates on grain which it was seeking to have the Commission accept for filing so as to permit the application of proportional rates in connection with certain proportional rates via rail east of the Mississippi and south of the Ohio River gateways. The Commission in that case stated on page 69 that they had no jurisdiction over the proposed rates, unless and until the railroads agreed to operate through rates under a common arrangement and continuous carriage.

Q. And do you mean rail lines who participated in that disclaim their willingness to operate common arrangement through routes with you?

A. They did. Thus, it may be seen that if the inland water carriers are without a means of filing their rates, rail carriers will, by restrictions such as the nature of those in the schedules under suspension, be in a position to eliminate competition of the water carriers on this grain traffic

and deny the shippers desiring to use the lower cost transportation the privilege to which they are entitled. That concludes my direct statement.

Mr. Belnap: I have some questions.

Exam. Taylor: Proceed.

[fol. 1914] Mr. Enoch. Will you read that last statement of Mr. Oliphant's?

(Record read.)

By Mr. Enoch:

Q. You say if they are without a means of filing the rates?

A. Yes.

Q. You don't say they are?

A. The I&S 4280 is indicative of that.

By Mr. Belnap:

Q. Mr. Oliphant, in connection with the rates shown in your Exhibit 66 and to traffic handled thereunder, have you conferred with the carriers and entered into any common arrangement for a through route?

Mr. Enoch: Just a moment. What are you talking about, the commodity?

Mr. Belnap: Just what I ask him, the tariff——

Mr. Enoch: The commodity?

The Witness: There is only one commodity in there; all grain.

Mr. Enoch: Name the carriers.

Mr. Belnap: Pardon?

Mr. Enoch: Name the carriers.

Mr. Belnap: What carriers?

The Witness: Wait until you hear my answer.

Mr. Enoch: You said the carriers, and I was wondering if you would specify the carriers, if you are expecting to [fol. 1915] get an affirmative answer.

Mr. Belnap: I am not expecting to get an affirmative answer.

The Witness: No. In connection with the rates that are published in Exhibit No. 66, we have not approached the carriers nor do we have any common arrangement with rail carriers.

By Mr. Belnap:

Q. As to the port-to-port rates on grain which are on file in your ICC No. 148, are those rates on grain in packages, you said?

A. Those rates are on grain in packages in carload quantities.

Q. Now, before you put those tariffs on file with the Commission, did you meet with the carriers, the rail carriers, that is beyond the ports, and enter into some formal arrangement with them about having through transportation take place?

A. No, sir. And that tariff——

Q. Has that matter ever been a matter of discussion between you and the rail carriers?

A. No, it has not, and that tariff, if you will recall, in the petitions for suspension of the present tariffs that are now under suspension, that the rates in that Tariff 31 were not exempt from this restriction.

Q. That is the September 15th filing?

A. The filing prior to this last—to the suspension of the schedules which are now under suspension.

Q. The carriers first started to restrict their propor- [fol. 1916] tionals so they wouldn't apply in connection with that rate?

A. In connection with those rates. Then W. J. Small and Company of Kansas City filed a petition for suspension of that publication, and for some reason or other, the rail carriers then excluded from this restriction the rates published in Item 3662-C of our Tariff 31-J, ICC No. 148.

Q. Did they take that matter up with you or——

By Mr. Enoch:

Q. Where are you now? Down at Kansas City?

A. That is where the rates in this item applied from.

Q. Are you talking about some tariff now you haven't referred to before?

A. No, sir.

Mr. Belnap: No, the same one.

Mr. Enoch: What tariff is it?

Mr. Belnap: ICC 148, Federal Barge Lines.

Mr. Enoch: In the record here?

The Witness: It is named in the suspended schedules of the rail carriers.

Mr. Enoch: Have you got it in this case here?

Mr. Belnap: Sure.

Mr. Enoch: What is the exhibit number?

Mr. Belnap: 2. No tariff items there. The tariff number—I mean the tariff item is referred to there.

Mr. Enoch: Is the tariff in evidence?

Mr. Belnap: The tariff itself? No.

[fol. 1917] The Witness: Refer[illegible] to it is.

By Mr. Belnap:

Q. Can you tell me the rates from Kansas City to St. Louis, Peoria and Chicago, named in that tariff?

Mr. Enoch: I object to that.

Mr. Belnap: Why?

Mr. Enoch: Because I want to see the tariff. You are bringing up something here that hasn't been in here.

Mr. Belnap: Normally, we tell rates, Mr. Examiner, by having the witness testify that such and such rates are found in the tariff.

Exam. Taylor: Is the tariff you refer to under suspension?

Mr. Belnap: No.

The Witness: But it is referred to in one of the suspended issues of the rail carriers.

By Exam. Taylor:

Q. Which one?

A. I don't know the ICC number, Mr. Examiner, but provision is made in the suspended issues.

Mr. Belnap: Wait just a second. Let's take proposed Rule 40. Mr. Examiner, if you will look on page 7, Mr. Tannehill's exhibit—is it 1 that has got all the tariffs, Exhibit 1?

Exam. Taylor: Page what?

Mr. Belnap: Page 7, you will find one reference to it under proposed Rule 40. If you will look at the third paragraph in that, after the heading. You find it? "Rates will also apply on shipments moving from Kansas City, Mis-[fol. 1918] souri, to Chicago, Illinois or Peoria, Illinois, under rates published in item 3632 of Federal Barge Lines' freight tariff No. 31-J, ICC No. 148, supplements thereto,

or successive issues thereof." Now, that similar provision is found in all of the tariff rules under suspension.

Exam. Taylor: Now, what does your objection go to, Mr. Enoch?

Mr. Enoch: I want to be sure that the tariff which he is asking Mr. Oliphant to express some opinion upon is before the Commission in this case.

Mr. Belnap: It isn't under suspension. It is before the Commission, I am sure of that.

Mr. Enoch: In evidence here?

Mr. Belnap: The tariff itself has not physically been offered in evidence.

Mr. Enoch: Then, I don't think there ought to be any discussion here by anyone, attempting to tell what the tariff shows.

The Witness: Well certainly, Mr. Examiner, if I want to tell what the rates are from Kansas City to St. Louis, Peoria and Chicago as published in that ICC number, I don't see how that could be objected to.

Mr. Belnap: I don't think we have any rate tariff in here yet, Mr. Examiner. We have got lots of testimony as to what rates are. This is the same sort of thing Mr. Enoch——

Mr. Brown: Mr. Belnap, if you would tell Mr. Enoch that [fol. 1919] that particular item does not apply to bulk grain, that would remove his objection.

The Witness: We have stated that.

Mr. Belnap: He stated that.

The Witness: Grain in packages in carload lots.

Mr. Enoch: Does it move any grain?

Mr. Belnap: We are going to tell what it moves, Mr. Enoch. We are going to put in the facts.

Mr. Enoch: I think I will stand by the objection. This is something that is brand new to me and frankly, I am in a position here where I don't know what he is shooting at.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: The objection will be noted on the record. Proceed and answer the question.

The Witness: Will the reporter please tell me what the question was? I think it was name the rates from Kansas City.

By Mr. Belnap:

Q. What are the rates, yes?

A. The rates from Kansas City to Chicago, in item No. 3662-C of supplement 13 to tariff 31-J, ICC No. 148, are 14 cents to Chicago, 12 cents to Peoria and 10 cents to St. Louis and East St. Louis.

By Exam. Taylor:

Q. On package grain?

A. On package grain in carload lots.

Q. In carload lots?

[fol. 1920] A. Minimum weights as described in the item in the same issue.

By Mr. Belnap:

Q. And it is those rates which you said are made by——

Mr. Enoch: I object to any further leading questions. We have been pretty good to you, Mr. Belnap. I think you ought to ask the witness to do the testifying.

Mr. Belnap: I wanted to be sure that these were the same rates he was talking about, Mr. Enoch, when he told how certain rates were made.

Exam. Taylor: What is the question, now?

By Mr. Belnap:

Q. Were you referring to those rates when you described how certain rates contained in that tariff issue were constructed?

A. Yes, those are the rates that I referred to when I stated they were made in the same manner as the bulk port-to-port rates were made. That is the two mill per ton per mile basis, plussed by handling charges of 2½ cents at port of loading and port of discharge, and increased by the Ex Parte 123 increases.

Q. Your Exhibit 64 shows your rate on bulk grain from Kansas City to Chicago. In fact, it shows two different rates. Now, would you use those rates as a basis and tell us how you construct 14 cents to Chicago.

A. No, you couldn't use those rates as a basis, because you originally take your two mills per ton per mile basis, and to that add your 2½ cents or 5½ cents to include both [fol. 1921] terminals and then increase them——

Q. Not 5½?

A. Yes.

Q. Twice 2½ is how much?

A. 5. After you add your 5 cents to your 2 mill basis, then increase that under 123, the 10 per cent increase.

Q. And that brought you to 14 cents——

A. The published rate in that ICC 148, 14 cents.

Q. What type of grain in packages has been transported under these rates in your tariff on file with the Commission?

A. The only tonnage that I know of that has moved on those rates is alfalfa meal.

Q. On commodities generally, what is the basis for the Federal Barge Line port-to-port rates?

A. On general commodities, carload basis, the usual method of determining the rates is applying 80 per cent of the all-rail rate applicable between the ports between which these rates are established.

Q. Do these rates on grain products in carloads, port-to-port, Kansas City to St. Louis, Peoria and Chicago, conform to that basis?

A. No, sir.

Mr. Enoch: I object to that. Have you got any movement of grain products?

The Witness: Alfalfa meal is a grain product and the [fol. 1922] rates are applicable under that interpretation.

Exam. Taylor: Do you withdraw your objection?

By Mr. Enoch:

Q. We are speaking of alfalfa meal?

A. Speaking of grain products, and alfalfa meal is a grain product, and alfalfa meal is the only traffic we have moved on these rates in 31-J.

By Exam. Taylor:

Q. In packages?

A. In packages in carloads. What was that question, now?

Mr. Belnap: I don't know if Mr. Enoch withdraws his objection.

Mr. Enoch: Yes.

Mr. Belnap: Read the question.
(Question read.)

The Witness: By "that basis," you mean the 80 per cent basis?

By Mr. Belnap:

Q. Yes, sir.
A. No, they do not.
Q. Will you tell us what are the local rates on alfalfa meal and other grain products from Kansas City to Chicago, Peoria and St. Louis?
A. All-rail?
Q. All-rail.
A. The all-rail rate on alfalfa meal, local rate, is 21 cents.
Q. To where?
A. From Kansas City to St. Louis. From Chicago—or [fol. 1923] rather from Kansas City to Chicago, the all-rail rate is 25 cents. Those rates are published in Agent Kipp's Tariff No. 332-B, ICC No. A-2942.
Q. Did this alfalfa meal which you transported on those rates you described have any prior rail transportation?
A. To my knowledge, all of that alfalfa meal was trucked into Kansas City. And the basis for that conclusion is that we got stuck with some cars because of low water on the Missouri River, and since we had signed a contract, a bill of lading contract to move this traffic from Kansas City to Peoria, it was necessary that we pay the local rail rate. In other words, we had to pay the freight charges and collect our all-water rate from the shipper in order to carry out the contract that we had entered into.
Q. Where did you transfer that from, those shipments; at Kansas City?
A. At Kansas City. And I should have followed up that we tried to get the shipper to take his grain back and ship it and use rail billing to get a balance of the through rate on it, but he said, "Nothing doing," he had no rail bill to surrender because the traffic came in by truck.
Q. Are you familiar with the adjustment of rates east of Chicago which are here involved, Mr. Oliphant?
A. As to how they were made or why they were made?
Q. And the character of the rates?

[fol. 1924] A. Only to the extent of knowing that the proportional rate is lower than the local rate.

Q. They are separately established factors, are they not?

A. Separately established factors and must have prior transportation into Chicago.

Mr. Belnap: That is all I have.

Exam. Taylor: Any questions by protestants? (No response.) Cross examine.

Cross examination.

By Mr. Cole:

Q. Mr. Oliphant, do you know what the rail proportional rate is from Kansas City to Chicago?

A. I think it is 16 cents, but I can't give you tariff reference, but I believe it is in one of the exhibits.

Q. That is near enough. And what is it from Kansas City to Peoria?

A. I don't know, but I imagine it would be 2 cents under Chicago.

Q. And what is the rail proportional from Kansas City to St. Louis?

A. I think it is 11 cents, Mr. Cole.

Mr. Belnap: 12.

The Witness: 12 cents.

By Mr. Cole:

Q. Are not the Federal Barge Line rates from Kansas City to Chicago, Peoria and St. Louis uniformly the same relative differences over the rail proportional rates?

Mr. Belnap: Over or under?

[fol. 1925] Mr. Cole: Under.

The Witness: Are you speaking now of the bulk rates on grain?

By Mr. Cole:

Q. No, I am speaking about these rates that the railroads have especially provided for in these tariff references that will continue——

A. The rates in 31-J, you are talking of now?

Q. Yes.

A. I think they reflect the same differences. Let's see. Chicago is 14 cents, Peoria is 2 cents under, 12 cents.

Q. That is on the package goods?

A. That is right, carload package goods.

Q. Then, Mr. Oliphant, on a movement from Kansas City through either Chicago, Peoria or St. Louis, whether that movement is via the barge liens or via the rail liness, will the various gateways be equalized on the through movement of the grain?

A. You are considering the movement east of those gateways? In other words, the through transportation?

Q. Yes.

A. I don't know.

Q. You don't know as to that?

A. No.

Q. I noticed in your tariffs here, that wherever your operation is referred to, you refer to barges and you refer to barge lines. In the language of your associates and [fol. 1926] yourself, have you ever interpreted the words "boat line" as referring in any way to a barge line?

A. I would say they were—those terms were synonymous or interchangeable.

Q. Then if you find something that sets up the wording "boat line," you may as readily interpret that as referring to barge lines as though we were referring to a boat?

A. I would say if you had barge line service there, yes.

Q. I see.

A. That the term would be interchangeable.

Q. Your Exhibits 63 and 64 seem to be concerned exclusively with two terminals, Chicago and St. Louis. We are now considering the application of the proportional rates beyond Chicago. Now, calling your attention to that St. Louis situation, was there an application on the part of the railroads some little time ago to cut out and destroy the application of the proportional rates beyond St. Louis to barge line grain?

A. You are speaking now of some case that may have been before the Commission.

Q. Yes, sir.

A. On traffic destined into the Southeast?

Q. Yes.

A. Yes, there have been several cases before the Commission, and in fact there is a proposed report now in I&S 4208, but in those cases that so far have come before the [fol. 1927] Commission, you have a different situation in

that the rates that were restricted into the Southeast were restricted as to all-water operations; whereas this 4718 case restricts the application of proportional rates east of the gateway to ex-river grain but does not restrict it on ex-lake grain, although I consider both the water lines operating on the Great Lakes and the water lines operating on the river as not being subject to any jurisdiction on its port-to-port rates, and to that extent are in the same category.

Q. Well, what is the St. Louis situation where the rail lines cut out the further application of proportional rates to ex-water grain, is that 203 ICC 385? I just want to get the correct reference.

A. I don't know what the citation is, but I can give you these cases. I&S 3928 was your first case, where the rail carriers attempted to eliminate the application of the proportional rates on ex-river grain. After the decision in that case, we had a formal complaint filed by the Farmers National Grain Corporation, and the ICC docket in that case is 266965. A proposed report was issued in that case and at just about that time, some new changes took place in the proportional rail rates by reason of the fact that the carriers wanted to reduce those proportional rates and establish proportional rates from other ports where they had none before and at the same time increase the local rates which were then applicable on ex-barge grain. That resulted in I&S Docket No. 4208. And the Commission then, [fol. 1928] by request of, I think, counsel for the Farmers National, consolidated this ICC docket No. 266965 with the general investigation in ICC docket 17000, Part 7-A, which included I&S 4208 and this Farmers National case. Now, that is a amtter of proposed report.

Q. Mr. Oliphant, just in order that we may get a notation on the record about this thing, in that proposed report in 4208 did not the Examiners propose to find that the proportionals need not be applied on ex-barge from the river ports, and then did not the Examiners in the same proposed report institute or recommend or prescribe a basis of proportional rates somewhat lower than the locals applicable to ex-water grain handled from the Pacific Coast to the Southeastern ports which would then move inland?

A. I am not——

Mr. Belnap: Just a minute. I want to object to any question about the Examiners. I think the Commission's

rules of practice are you can't refer to proposed reports in other proceedings.

Exam. Taylor: Objection sustained.

By Mr. Cole:

Q. In your Exhibit 64, I note that under column D, there are, opposite Kansas City, an item of 3.95 and 4.70, and as I look at that exhibit, those are the only exceptions from the basis 4.75 or 5.50, as it appears in the other items. What is the difference there, Mr. Oliphant?

[fol. 1929] A. That is brought about by the difference in the charge of transferring grain at Kansas City. The charge there is 39 cents.

By Mr. Belnap:

Q. A ton?

A. Per ton. Whereas at St. Louis and the other ports, it is 2¾ cents per hundred pounds or 55 cents per ton. That makes up your 3.95.

By Mr. Cole:

Q. And that is the only place that that charge——

A. That is correct.

Q. —varies? All the other origins, the charge if you do the service is the same?

A. Is 2¾. The only difference in that charge is at Kansas City and Cairo; 39 cents a ton on those two ports against 55 cents a ton at the other ports.

By Mr. Belnap:

Q. You said you added 2¾ to your 39 cents a ton. Just look at the figures.

A. At St. Louis.

Q. Is that what you add?

A. That is what Mr. Cole was dealing with: St. Louis. Yes, that is 55 cents a ton and 39 cents a ton; results in 4.70.

Q. The 3.95 is the Chicago and that is the——

A. Chicago. You have got 2 cents at the elevator which is 1½ plus half a cent.

Mr. Cole: That completes my cross examination.

Exam. Taylor: Mr. Enoch.

[fol. 1930] By Mr. Enoch:

Q. Mr. Oliphant, in view of your showing on Exhibit No. 63, what is the interest of the Federal Barge Line in this proceeding here?

A. If you will notice, Mr. Enoch, there were 40,312 tons of wheat that moved from Kansas City to Chicago. That is eligible for transportation east of Chicago at the proportional rates but that will not get the proportional rates if these restrictions are permitted to become effective.

Q. Does that originate at any Illinois points?

A. We have some Illinois traffic there to St. Louis, for example. And you have some East St. Louis to Chicago traffic. You have Kampville, Illinois, to Chicago and St. Louis, both. In other words, you have a total tonnage into Chicago for 1939 of 43,292 tons, which would be excluded from the use of the proportional rates east of Chicago if these restrictions were permitted to go into effect.

Q. You know, don't you, that the level of the proportional rate east of Chicago was not gauged either by the carriers when they made them or prescribed by the Commission by reference to any inbound charges on water-borne traffic over the Illinois River, do you not?

A. I don't know that the proportional rate east of Chicago was established with any consideration as to how it came into Chicago.

Q. Don't you think it had some reference to the propor-

[fol. 1931] tional rate from Chicago and St. Louis?

A. I am speaking of the proportional rate from Chicago to the North Atlantic.

Q. Yes.

A. I don't know that that is contingent upon the type of transportation that is used into Chicago.

Q. Do you think that the Commission, in so far as the question was before them, made the proportional rates to Chicago with reference to the level of the proportional rates eastbound from Chicago and St. Louis?

Mr. Belnap: Might I inquire what case Mr. Enoch is talking about?

Mr. Enoch: 15037 is one and supplemental proceedings in connection therewith. Also 17000, Part 7.

Mr. Belnap: I don't understand 15037 involved proportionals to any of this territory.

Mr. Enoch: It did to CFA territory, and in 17000, the Commission dealt with through business and had proportional rates in mind when they prescribed the proportional rates from the Missouri River to Chicago, Peoria and St. Louis.

The Witness: I don't know what the Commission had in mind when they prescribed the proportional rates, but I certainly don't think they had in mind restricting them to one type of transportation.

By Mr. Enoch:

Q. Do you think that the level of a proportional rate, a [fol. 1932] true proportional rate should be gauged by the amount of the inbound rate?

A. I don't think so, because—no, I don't, when it is published as a proportional rate.

Q. Do you think the Commission could prescribed with propriety a true proportional rate without being apprised of the inbound rate and its measure?

A. If it is to be published as a proportional rate without any regard as to where it is coming from and applicable to traffic having prior transportation, I will say yes.

Q. Now, what is going to happen to the Federal Barge Line, in your opinion, if the Commission allows these provisions under suspension to be effective?

A. You mean what is going to happen to the Federal Barge Line?

Q. Yes and its business from Chicago to Kansas City.

A. Speaking of grain?

Q. Yes.

A. I assume they would go out of the grain business.

Q. And you say you are powerless to protect yourself in that situation?

A. Well, if the carriers east of Chicago take the position that the carriers south of the Ohio and Mississippi Rivers took and east of the Mississippi River, I would say yes, because they refused to join in through rates.

Q. Are you entirely helpless to protect yourself in con- [fol. 1933] nection with barge movement to Atlanta, Georgia, for instance, barge and rail?

A. Yes, sir.

Q. Now, you referred to paragraph 13 of section 6 and you mentioned only one of several powers there that may

be exercised by the Commission, namely, the proportional rates. Now, you didn't name them all and didn't attempt to, did you?

A. I don't think so.

Q. And you are familiar with the jurisdiction that is given to the Commission there to prescribe joint one-factor rates where traffic may be brought to a port by water and thence beyond by rail, moved beyond by rail?

A. Yes.

Q. The Commission is empowered for that second means of transportation, to prescribe joint one-factor rates in that connection?

A. Yes, that is true, but here is what would happen. We have an order from the Commission under Ex Parte 96, under which we could establish through rates on grain on those Mississippi River counties south of the Ohio, but those rates would not move anything, because the rail rates could not be used as a measure to establish these through rates. In other words, your rail rate breaks would move the rail traffic, but in establishing our joint one-factor rates, it would reflect no difference on these rates through those gateways.

[fol. 1934] Q. There isn't anything to prevent your going to the Commission and asking the Commission to exercise its power to prescribe joint one-factor rates from points at which you originate grain and delivering that grain to carriers for further transportation?

Mr. Belnap: Mr. Examiner——

The Witness: We have done that.

Mr. Belnap: Pardon me.

Exam. Taylor: Sure.

Mr. Belnap: Might I inquire if what Mr. Enoch has in mind is that the protestant has no rights as a protestant here because it can go out and file a formal complaint?

Exam. Taylor: No, I don't understand it that way.

Mr. Enoch: No.

Exam. Taylor: He says if the respondents were successful in this case, would he be shut off entirely.

Mr. Belnap: He is ridiculing the issue here as to whether they should handicap and disadvantage the barge traffic. Why don't you ask about it? Maybe you have lost me.

Mr. Enoch: Mr. Oliphant is telling the Commission that if it takes the action here in this case which he opposes,

they are absolutely helpless and I am asking him if he is fully apprised of that fact.

Mr. Belnap: I follow it. Pardon my interruption.

The Witness: Yes, I know we can go to the Commission [fol. 1935] and ask for joint one-factor through rates. In fact, that is a question involved in 26712, that is I. C. C. docket 26712.

By Mr. Enoch:

Q. Have you ever initiated a proceeding before the Commission where you seriously fought to have the Commission prescribe joint one-factor rates with rail carriers on grain which you originate?

A. Well, we initiated this I. C. C. Docket 26712, which is now under litigation. We asked for one-factor through rates on grain as well as other commodities are involved, but particularly grain in there.

Q. Now, did you get it, what you asked for?

A. That is under litigation. It hasn't been decided yet. Now, again in I. & S. Docket 4208, we offered to establish through rates with the rail carriers, one-factor through rates. That is before the Commission also.

Q. You didn't initiate that proceeding, did you?

A. Well, it was an I. & S. case. We initiated it to the extent of asking for distinction of the rail rates.

Q. Now, that question might well have been originated by the Federal Barge Lines. A proceeding in which it was very much interested was instituted. You didn't go out in front, the Federal Barge Line, but it had the Farmers National Grain Corporation file that petition, didn't it?

A. The Federal Barge Line didn't have the Farmers National Grain Corporation file any complaint.

[fol. 1936] Q. Will you tell me this——

A. We participated in that docket.

Q. And quite extensively?

A. As an intervener, yes.

Q. And with great enthusiasm?

A. And in that docket we also asked for the establishment of one-factor through rates.

Q. Now, isn't it a fact that the Federal Barge Line does not want joint one-factor rates?

A. I don't know why we would ask for them if we didn't want them.

Q. Did you ever ask for them in connection with the business here on the Illinois River?

A. We have asked for joint—no.

Q. And if you are permitted to apply to grain brought to Chicago, for instance, by the Federal Barge Line or have applied the outbound proportional rate, that may be applied then in connection with a shipment which you might transport from Morris, Illinois, or some other origin point on Monday for 5 cents and on Tuesday for 4 cents and on Wednesday for 3 cents, might you not, and the Commission would be powerless to say anything about that inbound charge?

A. Well, I don't know why you would make reference to such things that you don't positively know happened. I don't know of any cases and I have stated in my direct [fol. 1937] testimony that the rates and the basis for determining the grain rates for the Federal Barge Line have been in effect for a number of years and we haven't departed from that basis. Now, if it was a customary practice of ours to change these rates overnight, as you make reference to, then I would say you had a different situation: Mr. Enoch.

Q. Well, but suppose some hazard or contingency arose whereby the people who were using your transportation at a certain rate were, because of some reason, out of the competition and they came to you and said, "You are charging me 5 cents and now I want 3, and unless you give me 3, I can't use your barge." You could give him 3 if you wanted to do it, couldn't you? And you wouldn't have to say anything about it?

A. You are talking about 3. You would have to confine yourself to some particular ports between which we would apply that 3 cents, for example.

By Exam. Taylor:

Q. Following that up on your Exhibit 63, the last two years you have shown no traffic moving from Morris, Illinois, to Chicago. Is that because of your competitive rate by these other barge lines?

A. Well, I imagine that is, Mr. Examiner, since the other barge lines have indicated they have moved tonnage from Morris, Illinois, and since the rate has been shown in the

record as 4⅛ cents; that is a lot lower than what our rate is.

Q. Do you know what your rate would be?

[fol. 1938] A. From Morris?

Q. On your so-called normal basis.

A. Under the normal basis, the Morris to Chicago rate is shown on page 17 of Exhibit No. 66, and that rate is 6½ cents, free on the barge and free off.

Q. So that if you wanted to get any of that traffic out of Morris, you would have to come down over a cent and a half a bushel; a cent and a half a hundred pounds?

A. We would have to come down to meet the competition, I guess, unless a shortage of equipment existed and we would get the traffic on the higher rate. But now, of course, I don't want you to understand that we think this 4⅛ cents is unreasonably low or that our 6½ cents is to be used as a yardstick for determining whether the 4⅛ cents is low, 4⅛ cents of this private carrier or common private carrier, whatever you term it, because our traffic department has made studies of this grain movement and we could, if we desired, go a lot lower than this two mills per ton per mile. But we take the position that rather than reduce these rates to a basis that would affect the whole structure that we apply all over the system, we would just sooner let the carrier that is handling it go ahead and handle it. In other words, we are not going to reduce our rates simply because we can reduce them and make money, to try and put some privately owned carrier who may be acting as a common carrier out of the business.

[fol. 1939] By Mr. Enoch:

Q. Wait a minute, who is acting as a common carrier?

A. Well, I understood that Mr. Mechling testified here that he was a common carrier operator.

Q. You are very much in error about that.

A. He is privately owned, but I am positive he stated——

Mr. Enoch: I move that the statement by Mr. Oliphant indicating that Mr. Mechling is a common carrier be stricken from the record.

Exam. Taylor: The record will speak for itself.

The Witness: I am not saying that he is a common carrier. If he is a common carrier, I refer to him as a pri-

vately operated common carrier, if he is a common carrier, and I believe the record will show that.

Exam. Taylor: Had you finished, Mr. Enoch?

Mr. Enoch: No.

By Mr. Enoch:

Q. Now, the Federal Barge Line will never be able to get one bushel out of these Illinois points to Chicago until it gets some of these trick barges that are being used in the transportation of that corn, isn't that right?

A. Oh, yes, if we wanted to reduce our general basis of established rates to meet this competition.

Q. How would you handle it, over the same route it is being handled now?

A. Yes.

[fol. 1940] Q. With the Federal Barge Line barge?

A. Sure.

Q. Go down the Sag Canal?

A. No, we wouldn't go through the same channel to meet this reduction.

Q. You never heard me say you couldn't put it down to an eighth of a cent, if you wanted to?

A. Well, I——

Q. There isn't any prohibition at all?

A. I am talking about reductions and at the same time not lower than the level on which we can make money.

Q. If you handle this corn with the barges that the Federal Barge Line now operates, you can't follow the same route that is being followed today by these private carriers?

A. The present equipment of ours cannot go through the Sag Canal.

By Mr. Brown:

Q. None of it?

A. Not with our tow-boats. I doubt seriously if they could go through.

By Mr. Enoch:

Q. You haven't handled any corn from Illinois points in either 1938 or 1939 to Chicago, have you?

A. 1938 or 1939?

Q. Yes.

A. Well, if you consider East St. Louis an Illinois point, we have, yes.

[fol. 1941] Q. Pardon me?

A. Illinois—rather, East St. Louis, Illinois, as an Illinois point. No, that was wheat. If it is not shown on this exhibit, we handled none; no bulk grain.

Q. Are you sure about this figure here, Morris to Chicago in 1936, almost 24,000 tons?

A. Yes, sir.

Q. Over 800,000 bushels?

A. Yes, sir.

Q. Now, taking 63, Exhibits 63 and 64, together, did it cost the man who paid those transportation charges in 1936 12¼ cents to get that from Morris into his elevator in Chicago?

A. I wouldn't say you could apply that charge to the tonnages that are shown on Exhibit 63, because I don't know what the method was that was used in transferring it from rail equipment or truck equipment into our equipment. So to that extent, I would say you couldn't match the charges here against these tonnages. If we performed the services at origin points and it went through the elevator at Chicago, then these rates plus the handling charges here would be borne by the shipper.

Q. Would you say that it costs the shipper 12¼ cents or some figure near that?

A. If we performed the service, yes, that is what it did cost him.

Q. Suppose you didn't perform the handling?

[fol. 1942] A. I don't know what he paid to transfer his grain from cars at Kansas City through an elevator into our barge. I don't know whether that is a standard charge or not, but I imagine it would be about a cent and a half.

Q. Your charges wouldn't be so far out of line, would they, that the total cost to the shipper would be somewhat near 12¼, wouldn't it?

A. Oh, yes.

Mr. Enoch: That is all I have.

Exam. Taylor: Anybody have a question?

Mr. Cole: I have one *one* more, if I may.

Exam. Taylor: Mr. Cole.

By Mr. Cole:

Q. Mr. Oliphant, on this grain, this package grain that does move up via Federal Barge Lines or at least is covered by this tariff provision, item 3632——

A. 62, isn't it?

Q. 3662, isn't it?

A. C. I think that is the item. Yes. No, it is 3632; I am sorry.

Q. Yes. When that gets to Chicago and they come to the question of applying the proportional rates east of Chicago to C. F. A. territory, which level do they apply, the ex-TM level or the ex-Northwest level?

A. I have no idea.

Q. You don't know anything about that?

[fol. 1943] A. No, I don't know how the shipper makes his shipments out or what rates. He may surrender the billing, I don't know what rates he gets out of it.

Mr. Enoch: Mr. Examiner, may I ask a question?

By Mr. Enoch:

Q. Did you say that the Federal Barge Line asked for joint one-factor rates in this 26712?

A. 712.

Q. 712?

A. Yes, sir.

Q. The Federal Barge Line asked for that?

A. That is right.

Q. Wasn't that a complaint filed by the Farmers National?

A. No, that is a general barge line case resulting from a complaint filed by the railroads and the barge lines, which was upon the Commission's own motion; embodied in this 26712 investigation, resulting in a general investigation. It started back in 1935.

By Mr. Belnap:

Q. That involves, does it not, a reopening and a rehearing in the case involving the Federal Barge Lines joint rates, which is reported in 77 ICC 317?

A. I will accept your citation as correct. I think that is.

Q. That is an original case seeking joint rates?

A. That is right.

Q. And in 26712, do you know what the basis was for the proposals of single factor through rates on grain, just the [fol. 1944] general basis?

A. The general basis was, for example, into the Southeast, the total of the proportional rail rate east of the gateway and our local port-to-port factor plussed by the handling charges necessary to transfer from the equipment at origin into our equipment.

By Mr. Enoch:

Q. At origin?

A. Yes.

Q. Or at the interchange point?

A. Both. You had a transfer from rail equipment or to our equipment at origin, into ours. Then you had another transfer at the port of interchange with the rail carrier.

By Mr. Belnap:

Q. However, it was predicated on the use of the proportional rail rate east of the gateway, plussed by our local port-to-port factor and handling charges?

A. Oh, yes.

Q. Did that proposal relate to rates to Chicago?

A. On the grain rates, no. We asked for rates into the Southeast, one-factor through rates, because those were the carriers with which we tried to get the through rates put in voluntarily.

Q. Yes. As far as Chicago, is concerned the barge line has continued to have the traffic handled on combination of separately established factors?

A. We continued to do that in any instance where the rail carriers follow a similar practice. Where they don't [fol. 1945] do that or where they are unwilling to do that and want to force us into the joint rates, then we will use that proportional rate and if they want to quote it as a one-factor through rate, all right, but we say that that through factor should contain as a part of it the proportional rate east of the gateway.

Q. Take either from the Missouri River or from Illinois, are you willing to join the carriers east of Chicago in that basis of rates?

Mr. Enoch: I object to that. What is the use of saying that? There have been months and months and years and

years for the Federal Barge Line to file a petition with the Commission asking for that.

Mr. Belnap: What is wrong with the present adjustment, Mr. Enoch?

Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Enoch: I suggest that Mr. Oliphant is not ready to commit the Federal Barge Lines, unless you have discussed it with him.

Mr. Belnap: I have not discussed it before, but I do know the policy of the traffic department which he represents.

The Witness: I can say this much, as far as our line is concerned, I assume they would follow the same procedure with the rates east of Chicago or through Chicago and Peoria, the same position they took in the Southwest, and [fol. 1946] in that instance they were willing to establish through one-factor rates.

By Mr. Enoch:

Q. Why do you publish proportional port-to-port rates?

A. For the same reason that the rail carriers move their business on proportional rates.

Q. Instead of doing that, why didn't you ask for joint one-factor rates?

A. Why should be publish any different basis, unless compelled to do so, when the rail lines follow that procedure? If they have a rate break situation, why shouldn't we have it.

Mr. Belnap: Are you talking, Mr. Enoch, about the case in which the Federal Barge Lines published its grain rates on the Mississippi as proportionals, from and to the ports?

Mr. Enoch: That is right.

Mr. Belnap: You appreciate at that time, docket 26712 was pending.

Mr. Enoch: That did not apply through Chicago.

Mr. Belnap: Neither did the rates we were trying to file with the Commission apply through Chicago.

Mr. Enoch: There isn't anything to prevent your asking the Commission to apply joint one-factor rates through Chicago on this grain.

Mr. Belnap: I think we would — apt to take it without asking the Commission for it. Presently, we have a com-

bination of port-to-port rates up to Chicago, plus reship-
[fol. 1947] ping rates beyond, the same as the rail rate structures are made.

Exam. Taylor: A good deal of this is argument.

Mr. Belnap: I just want the position of the Federal Barge Lines to be clear and not to be misunderstood here.

Exam. Taylor: Any other questions? Mr. Brown?

By Mr. Brown:

Q. Do you, at any time, know what happens to the grain that you have brought into Chicago for delivery to these elevators or mills?

A. No, I don't know what happens to the grain after it arrives at Chicago, but from testimony I have heard in this case, it is not consumed in Chicago. But I don't know what happens to it.

Q. Well, if most of the grain that comes to Chicago on the Illinois River goes out by lake, there wouldn't be any necessity for an arrangement between the barge line, your barge line and the Eastern railroads, would there?

A. Yes. Why should I be deprived of the advantage of both methods of transportation out of the gateway; not we, but why should the shipper be deprived of it? The principle is wrong, in other words. If you restrict this proportional rate so as not to apply on river grain, permit it to apply on lake.

Q. You didn't get my question.

A. Yes, I did.

Q. If the most of the inbound grain by barge goes out from Chicago by lake, is there any necessity for making a common arrangement between the barge line and the Eastern railroads?

[fol. 1948] A. It wouldn't be, because then the traffic would go out ex-lake, if these restrictions are permitted to become effective.

Q. Would you say there has been a rather gradual increase in the Federal Barge Line business in bulk grain during the last two or three years?

A. To this territory?

Q. Over your system.

A. Well, we have had a pretty good export market and our grain movement to New Orleans increased considerably.

Q. Didn't the barge line in 1938 handle over 22,000,000 bushels of corn?

A. Yes. that would be the result of the export market.

Q. And isn't it a fact that you haven't handled any corn from Kansas City to any point north of St. Louis? Do you keep pretty close touch with what is going on?

A. We have handled some corn from Kansas City to St. Louis in 1939.

Q. I said north of St. Louis.

A. No, we haven't.

Q. Do you watch your tonnage reports week to week and month to month?

A. Well, in a general way, I would say yes.

Q. Well, were you attracted, was your attention attracted to this heavy movement of over 40,000 tons of wheat from Kansas City to Chicago last year?

[fol. 1949] A. Yes.

Q. Do you know what happened to that wheat when it got here?

A. No, sir, I don't.

Q. Do you know for whose account it was?

A. No, I don't.

Q. Well, don't you know that that was for the mills at Buffalo, that all moved by lake from Chicago?

A. No, sir, I don't.

Q. If you will locate that, you will find that that was wheat that formerly moved from Kansas City by rail and went down the lake from Milwaukee. Your barge line has been getting it by water to Chicago and then goes on the lake from Chicago. Look into that and see if I am not right. Apparently, the rates of your company and the people like the Mechling are pretty far apart. Does that indicate that you have never gotten together to discuss what would be proper rates for either one of you?

A. We wouldn't discuss with the Mechling line as to what rate would be proper to apply for account of both of our lines. As I stated, we have a basis for making grain rates which we apply all over the system. We think it is a good basis and one which will result in our ability to make money. We can go lower and still make money, but rather than break up the general rate structure simply to cope with a carrier on some individual stream, we let the business go by the board.

Q. Well, it would be just all right to say, where you are [fol. 1950] in a position where you can say, "Take our basis or not, take it or leave it." In other words, you will not deviate from what you understand to be your proper basis?

A. We will not depart from the basis which we think is proper for use all over the system.

Q. Is that because you think if you lower the rate between two ports, you might have to do it between all ports?

A. Well, it may result in a request for lower rates some other place and then it would put the Federal Barge Lines, a Government agency, in the position of competing for traffic that a privately owned carrier is handling, and we don't take that position. It is our business to get the privately owned carrier in the business and let him operate. If he can make money out of his rates, fine, let him go ahead.

Q. Eventually, they might wipe you out?

A. That is the original intention, I think, of the establishment of the barge line, of the Federal Barge Line, to permit private carriers to come in and take that traffic away from us.

Q. And that process has begun at Chicago on the upper end of the River?

A. It hasn't begun there. We meet with competition in other states. The Warrior Division, for example, we lost sugar movements on the Warrior Division to a private carrier, and we didn't cut the sugar rates to meet this competition.

Q. But as far as the grain business is concerned, the proc- [fol. 1951] ess of letting in the private and eliminating the Federal Barge Line has begun only at Chicago?

A. No, you have heard tell of the John I. Hay operating from New Orleans with grain and taking sugar out of New Orleans. We haven't tried to meet the John I. Hay competition.

Q. If his barges were held up a long time to get through the elevator, he will soon get sick of that business, won't he?

A. I imagine so, if he needs his equipment.

Exam. Taylor: Is that all you have, Mr. Brown?

Mr. Brown: Yes, that is all.

By Exam. Taylor:

Q. Mr. Oliphant, I am interested in this 40,312 tons of wheat that moved from Kansas City to Chicago in 1939.

A. Shown on Exhibit 63?

Q. Yes, and I would like to know if the rates shown in Exhibit 4 of——

A. 64.

Q. Of 12.8 with a minimum of 350 tons, the 8.8 rate with a minimum of 1,000 tons, what is the rate or were the rates that were collected on that traffic?

By Mr. Belnap:

Q. Do you have that information here, Mr. Oliphant?

A. No, I don't but——

Q. Can we supply it for the record?

A. I don't know whether we could do that, Mr. Belnap, [fol. 1952] without making an extended check of our freight bills, to learn how those shipments moved; if it moved in one quantity or in several different movements.

By Exam. Taylor:

Q. Let me ask you this: If a barge line were to move over there—how big is the barge, the largest barge you have?

A. 22 to 25,000 tons.

Q. If a full barge load was to move over there, would these be the rates you would apply on that?

A. As to the line rates, I can say definitely that the rates under Column C, generally speaking, of the 8.8 cent rate would be applied to a quantity movement over a thousand pounds or better. Now, the handling charges, not knowing how the particular traffic that you refer to was handled at origin, whether it came through an elevator or whether we transferred it, I couldn't say with any definite accuracy whether the additional handling charges shown on that exhibit would apply. But to the tonnage shown on Exhibit 63, the rates would be applied.

Q. It was applied?

A. Yes, if you happen to have a movement in that forty thousand some odd tons of 350 tons, then your higher rate would be applied.

Q. I notice in some instances you have a 1,500 ton minimum but you don't have it in connection with the rates from Kansas City to Chicago.

[fol. 1953] A. That is right.

Q. I was wondering——

A. That is because of channel conditions on the Missouri River. The 1,500 ton minimum is too much depth for the channel and we couldn't get through with it.

Q. I see. Now, when you delivered that traffic at Chicago, did you issue expense bills, freight bills for that?

A. Yes, we make the same kind of expense bills that the rail lines use when they deliver freight. In other words, our system of billing, bills of lading, way bills and freight bills are almost identical with the rail lines.

Q. And do you show the rate in that?

A. Yes, and the method of accounting is, I would say, altogether the same as the rail carriers. We follow the standard of accounting, way bills and collecting our freight charges, even to the extent of the credit allowance.

By Mr. Enoch:

Q. You don't make the same kind of annual reports, do you?

A. Well, I don't know whether they d› or not. That is an accounting feature. They make our accounting reports under the rules of the Interstate Commerce Commission on joint traffic.

By Exam. Taylor:

Q. Do I get it straight, that in connection with package grain, that you have joint through rates with the rail carriers through Chicago?

A. They are not joint one-factor rates. They are made up of a combination of the filed rate from Kansas City to [fol. 1954] Chicago, water filed rate plus the proportional rail rate from Chicago to the East.

Exam. Taylor: Anything further from this witness?

By Mr. Enoch:

Q. Mr. Oliphant, did you say in connection with Exhibit 63 that those rates under which those bulk grain movements were transported were unfiled rates?

A. The tonnage that is shown on Exhibit 63 moved on unfiled rates.

Q. Filed neither with the Illinois Commission——

A. Wait a minute, when you refer to unfiled rates, I interpret that you mean filed with the Interstate Commerce Commission.

Q. What do you mean, that is what I want to know?

A. Well, if you want to know whether this traffic moved on filed rates and by "filed rates" you mean any regulatory body, I would say yes, you will find some traffic moving on rates filed with the Illinois Commerce Commission, traffic from East St. Louis, Illinois, for example, to Chicago. That rate is filed with the Illinois Commerce Commission and it is published in Exhibit 66.

Q. All these intrastate movements shown on Exhibit 63 are covered by rates on file with the Illinois Commerce Commission, is that right?

A. All Illinois intrastate rates are on file with the Illinois Commerce Commission and are published in that Exhibit 66.

Q. The interstate movements are under rates that are [fols. 1955-1957] not on file wit the Interstate Commerce Commission?

A. With any regulatory body.

Mr. Belnap: Mr. Examiner, I offer Mr. Oliphant's Exhibits in evidence.

Exam. Taylor: Exhibits 63 to 66 will be received.

(Exhibits 63 to 66, both inclusive, Witness Oliphant, received in evidence.)

Exam. Taylor: Is that all from this witness? (No response.) Witness excused and we will adjourn until nine o'clock tomorrow morning.

(Witness excused.)

(At 5:25 o'clock P. M., Monday, January 22, 1940, adjournment taken to 9:00 o'clock A. M., Tuesday, January 23, 1940.)

[fol. 1958]

Morrison Hotel,
Chicago, Illinois,
Tuesday, January 23, 1940.

Met pursuant to adjournment at 9:30 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances:

As heretofore noted.

Proceedings

Exam. Taylor: Gentlemen, are you ready to proceed? Off the record.

(Discussion outside of the record.)

Exam. Taylor: All right, now, come to order; the next witness, please.

Mr. Belnap: Mr. Schimmel, will you please take the stand. May we distribute Mr. Schimmel's exhibits?

Exam. Taylor: Yes, off the record.

(Protestants' exhibits 67 to 78 marked for identification.)

Exam. Taylor: Proceed.

J. J. Schimmel was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Will you state your name?

A. J. J. Schimmel.

[fol. 1959] Q. By whom are you employed?

A. By the Continental Grain Company, Chicago.

Q. In what capacity?

A. Traffic manager.

Q. The Continental Grain Company is one of the protestants?

A. Yes, sir.

Q. And have you been designated by the protestants who joined with the Continental Grain Company as one to present the traffic evidence on behalf of that group?

A. I have.

Q. What has been your traffic experience, Mr. Schimmel?

A. I have been employed with Continental Grain since March, 1938. The preceding four years, as traffic manager, Farmers' National Grain Corporation, Chicago; four years preceding that time, from 1930 to 1934, traffic manager Grain Stabilization Corporation; and 1924 to 1930, traffic manager, Kansas Wheat Growers Association, Kansas City.

Q. Are you familiar with the issues in this case?

A. I am.

Q. And have you made a study of the rates on grain which are involved in this case, for the purpose of presenting oral testimony, supplemented by a series of exhibits?

A. I have.

Q. Were those exhibits prepared under your supervision and direction, and do you believe them to be true and correct?

[fol. 1960] A. I do.

Q. Please proceed in your own way, Mr. Schimmel, to describe your exhibits and give such testimony in connection therewith as may seem necessary?

A. Exhibit 67 is a statement of the all-water and all-rail rates on corn from Illinois River landings and from St. Louis and Kansas City, Missouri, to Chicago, Illinois, the distances via water and via rail both being shown. The heading of this exhibit states that the rates shown thereon are applicable to grain. This is true insofar as the rates shown under the heading "Rail Illinois Proportional" are concerned, and as to the rates shown under the heading "Federal Barge." However, the "Rail Intrastate" rates shown on this exhibit are confined to corn. The rates shown on the exhibit for "Independent Barge" are shown in two items and brought to a total, both items requiring explanation. The second item opposite each origin is a trimming charge which is explained in the footnote on the first page of the exhibit, indicated by an asterisk. That charge covers services rendered at the time the barge is unloaded into elevators at Chicago, and is named in dollars and cents per thousand bushels. On this exhibit I have reduced the rate to cents per hundred pounds on the basis of the charge of $3.50 per thousand bushels, which is applicable on barges of more than twenty thousand bushels, and have used the weight per bushel of corn of fifty-six [fol. 1961] pounds. In the case of wheat or soy beans, this

charge would be slightly lower, since these two grains weigh sixty pounds per bushel. The first item opposite each origin under the "Independent Barge" column applies to the line-haul transportation from inbarge at point of loading to inbarge at point of unloading. In the case of Morris, Seneca, and LaSalle, Illinois, the rates heretofore assessed have been named in cents per bushel, the rates being 1.75 cents from Morris and Seneca, and 1.5 cents from LaSalle. These rates per bushel apply to wheat, corn, and soy beans. For the purpose of this exhibit, I have reduced them to cents per hundred pounds on the basis of the corn weight. In the case of wheat or soy beans, the computation would show a somewhat lower charge per hundred pounds, the exact figure being shown at the end of Note B on page 2 of the exhibit. There is a typographical error in the next to the last line of that note. The difference between the rate per hundred pounds on corn, on the one hand, and against wheat or soy beans on the other, should be shown as .21 cents instead of .335 cents.

Mr. Enoch: If the Examiner please, I want to interpose an objection here to exhibit 67, and all other exhibits that are subject to the same criticism; namely, that there appears here in the form of a note, such statements as this: "The Independent Barge Lines who maintain a regular service and rates are as follows:—" and then goes ahead [fol. 1962] and names them. Now, that is not the place for that kind of statement, where the question is as important as it is in this case; and I think things of that kind and character should be stricken from the exhibit.

Mr. Belnap: That note, Mr. Examiner, was not put on there for the nefarious purpose that Mr. Enoch anticipates; and insofar as it recites a fact, I will agree that it should be stricken from the exhibit, and we will deal with it in the witness' oral testimony. The note is there to explain what is meant by independent barge, since the heading is not self-explanatory. The heading Mr. Enoch complains about, may we consider that phrase as stricken from the exhibit?

Exam. Taylor: Just how much of it, all of Note B?

Mr. Belnap: No; it should identify the name of the carriers in order to explain the heading "Independent Barge" on the exhibit.

Mr. Cole: Would it be possible to take the words on the first line, "Who maintain a regular service and rates," and have it read, "The independent barge lines are as follows:——"

Mr. Belnap: That suits me.

Mr. Enoch: Is that independent, as distinguishing it from the Federal Barge?

Mr. Belnap: That is right.

Exam. Taylor: It will be understood, then, that note B of exhibit 7, the first line, we will eliminate the words, [fol. 1963] "Who maintain a regular service and rates?"

Mr. Belnap: Satisfactory.

Exam. Taylor: Proceed.

The Witness: (Continuing) From all other origins shown on the exhibit the rates indicated under the heading "Independent Barge" are named in cents per hundred pounds and apply alike to corn, wheat, oats, and soy beans. In setting down these independent barge rates, I have used the charges paid by Continental as to grain from origins from which the Continental received grain during 1939. These origins include Morris, Seneca, LaSalle, Lacon, Peoria, and Havana. In the case of Morris and Seneca, the grain received by Continental was purchased by it from the Cooperative Allied Grain Dealers' Association and Lowell-Hoit delivered Chicago. The grain moved to Chicago in barges of the Allied Barge Corporation which were towed by the A. L. Mechling Barge Line. For the account of the Cooperative Allied Grain Dealers Association or Lowell-Hoit, we paid to the Allied Barge Corporation transportation charges to Chicago at the rate of 1.75 per bushel, which figures 3.125 cents per hundred pounds of corn.

Exam. Taylor: Is that based on 56 pounds?

The Witness: On 56 pounds.

By Exam. Taylor:

Q. Per bushel?

A. Yes, sir. However, the A. L. Mechling Barge Line maintained from Morris and Seneca this last year on grain [fol. 1964] handled in its own barges a rate of 2.75 cents per hundred pounds. The grain received by Continental from LaSalle was transported by the John I. Hay Company at a rate of 1.5 cents per bushel, which is the equiv-

alent of 2.675 cents per hundred pounds on corn. From that same station the A. L. Mechling Barge Line maintained a rate to Chicago of 2.75 cents per hundred pounds, and we have had grain transported on that rate since this exhibit was prepared.

Mr. Enoch: I don't want to be interrupting here any more than——

Mr. Belnap: Go right ahead.

Mr. Enoch: The Examiner will note in this statement, I suppose, there are similar expressions involved. It is stated repeatedly that such-and-such a company maintains and have a rate. Now, the evidence here is that they neither maintain, nor do they have a rate in the sense that they cannot maintain and do not have a rate if they do not publish it somewhere. I do not want to object to that, as that statement and similar expressions will be used, I have no doubt, in the testimony to follow. May it be understood now that if it is used and intended to use the expression "Maintain a rate," in a technical sense, I object.

Mr. Belnap: Mr. Examiner, it is a rate in a technical sense, unless Mr. Enoch believes only a rate in a tariff on file with the Interstate Commerce Commission can be a rate.

[fol. 1965] Mr. Enoch: I didn't say anything about being on file with the Interstate Commerce Commission; but it ought to be written or published somewhere; otherwise, it ought to be a contract charge.

The Witness: Anyone in the grain business can get that rate; it is public information.

Mr. Enoch: I move that statement be stricken out.

Mr. Belnap: I like that statement.

Mr. Enoch: I think you would.

Exam. Taylor: Where would he find the publication of that charge?

The Witness: It would not be published, Mr. Examiner; but if anyone in the grain business desired to know what the rate from Morris, Seneca, or LaSalle is, Mechling would gladly furnish it.

By Exam. Taylor:

Q. How would he furnish it, merely call him up and he would give you the rate?

A. He might do that, or write him a letter.
Q. It might be the same today and different tomorrow?
A. He has not done that in the past.

Mr. Enoch: Mr. Schimmel made a statement that anybody could get that rate; I don't think that ought to be allowed in the record. I made a motion to strike it out; I don't think it ought to remain there, because in view of the previous testimony there isn't any obligation on the part [fol. 1966] of Mr. Mechling to give that rate to anybody, and he does not have to.

Mr. Belnap: Mr. Examiner, that perhaps is undoubtedly true, and that there is no statutory requirement that a common carrier not subject to the jurisdiction of the Interstate Commerce Commission must keep a rate in force for any particular length of time. But here the fact is that we had it from Mr. Mechling, and we are now having it from Mr. Schimmel that certain charges were known, and it was a matter of public knowledge, and that the same figure had been constantly in effect. As I understand it, Mr. Schimmel uses the word "maintained" in that sense.

The Witness: That is right.

Mr. Enoch: What sense?

Mr. Belnap: That the rate was commonly known in the trade, and remained at the same figure throughout the season.

Mr. Enoch: The testimony by Mr. Mechling himself is that he is a private carrier.

Mr. Belnap: Mr. Enoch, it is a matter of legal conclusions, and the facts show——

Mr. Enoch: The documents that he issued to the public show he is in the business of a private carrier.

Mr. Belnap: What a man says he is does not control; it is what he does.

Mr. Enoch: When Mr. Schimmel says anybody can go [fol. 1967] and get that rate, I am sure he does not mean that; because if I went over tomorrow, or you went over tomorrow and asked Mr. Mechling to transport that freight, and he refused to do it, we could not force him, or sue him for damages.

Mr. Belnap: That depends on whether he is a common carrier by water.

Exam. Taylor: The exhibits will be received, subject to Mr. Enoch's objections.

Mr. Enoch: Exception.

Exam. Taylor: Exception noted on the record.

Mr. Enoch: Mr. Belnap, are you going to attempt, as we go along here and we are discussing some other subject at the same time,—attempt to characterize the service that is performed by one or more of these barge lines?

Mr. Belnap: Neither by Mr. Mechling, who is called as a witness, nor this witness, will I attempt to draw legal conclusions. I shall attempt to have them state the facts, and then have the Commission draw legal conclusions.

Mr. Enoch: Is Mr. Schimmel on here for the purpose of telling the so-called facts?

Mr. Belnap: What has been done, and only that.

Mr. Enoch: Can we do that at one time, instead of making a little touch here and there, and then skip it for a while and taking it up later?

Mr. Belnap: Mr. Schimmel has prepared a statement [fol. 1968] which is in description of his exhibits, and I think he would probably be discommoded if he were not allowed to go ahead in the order he has prepared his material.

Exam. Taylor: Proceed.

The Witness: (Continuing) From the Illinois stations shown on this exhibit, other than those from which Continental received grain, the line-haul rates shown are those which were assessed on grain of other shippers who are protestants. The Federal Barge Lines' rates, as in the case of the independent barge rates, apply from inbarge at point of loading to inbarge to port of unloading, and the additional item shown for trimming charge was computed on the same basis as I have already described. The Federal Barge Lines' rate shown from Illinois River landings, as well as from St. Louis, applies in connection with a minimum weight of fifteen hundred tons. When the minimum weight is one thousand tons, the rate is one cent higher. None of the barge rates shown in this exhibit are published in tariffs on file with the Commission. The rates shown are however, a matter of common knowledge throughout the grain trade and, in case of the Federal Barge Lines, are published in a printed document.

Mr. Enoch: What is common knowledge throughout the grain trade, the Federal Barge or the other?

The Witness: Both of them are common knowledge.

Mr. Enoch: I want to move to strike that out, about this [fol. 1969] common knowledge.

Mr. Belnap: That is a question of fact, Mr. Examiner. The witness testified to the fact.

Exam. Taylor: Objection overruled.

The Witness: Anyone can secure these rates, Mr. Enoch. You can go to Mechling, or you can go to the Federal Barge Line. They even have their tariff in printed form, containing the rate. There is no secret about this.

Mr. Enoch: I move the statement be stricken.

Exam. Taylor: Overruled.

Mr. Enoch: Exception.

Exam. Taylor: Exception noted on the record.

The Witness (Continuing): It will be noted that from the origins shown in Illinois the distances to Chicago via water are approximately the same as the distances via rail. The time in transit to South Chicago elevators via barge service from Morris, Seneca, Ottawa, and LaSalle to Chicago is less than via rail. From the landings further south the time via river approaches finally exceeds the time via rail, the difference in favor of the rail becoming increasingly greater as the water distances increase.

By Mr. Belnap:

Q. Mr. Schimmel, on this exhibit you show certain rail rates under the heading Illinois Proportional; is it not true that those rates as published in the tariffs of the Western lines serving those points, are actually published as [fol. 1970] local rates to Chicago?

A. Yes, sir.

Q. They are local interstate rates?

A. Yes, sir.

Q. And there is nothing in a tariff which ties those rates up with any rates beyond,—no tariffs of the western lines?

A. No, none whatever.

By Exam. Taylor:

Q. In the last column, the rail mileage is that the short-line mileage, or tariff mileage, or what?

A. Those mileages, Mr. Examiner, were taken from the railroad tariff. If it is a Rock Island point, it is taken from the tariff of the Rock Island.

Q. Then it is not necessarily the short-line?
A. No, it is not.

Mr. Enoch: In connection with this last inquiry of Mr. Belnap's, is there a local rate different—take Morris to Chicago—a local rate different from this rate you identify as Illinois proportional?

The Witness: The Illinois proportional and the—there are two lines there, of rates, the rail intrastate rate with no transit, and the Illinois proportional 9½ cents, which is the same as the local rate to apply to interstate destinations.

Mr. Enoch: Just the two rates from Morris to Chicago?

The Witness: Yes.

[fol. 1971] By Mr. Belnap:

Q. You just mentioned that rail rate shown under the heading of "Rail intrastate"; I understand that rate is one that has been referred to in this record as the lake local?
A. Lake local rate, yes.
Q. And is the prohibition against using that rate on the transit of shipments contained in the tariff of the Western line publishing the rate?
A. There is; there is a specific provision that states that it will not apply with transit privileges.
Q. But that is published by the Western Line, which originates the traffic, is it not?
A. Yes, sir.
Q. So far as the tariffs of the Eastern Lines are concerned, there is no publication about that particular rate, the lake local?
A. None whatever.

Mr. Enoch: Did you say that was on file with the Interstate Commerce Commission or the Illinois Commission, the lake local?

The Witness: The Illinois Commission. It didn't say it, Mr. Enoch, but it is on file with the Illinois Commission.

Mr. Enoch: It is not on file with the Interstate Commerce Commission?

The Witness: No, I would say that it was not; that is [fol. 1972] my opinion.

By Mr. Belnap:

Q. Isn't it in the tariff filed with the Interstate Commerce Commission?

A. Yes, sir.

Q. It is on file, then?

A. Well, then, it would be; it is published on intrastate traffic.

Q. It is restricted by its terms to be applicable on intrastate traffic, and not subject to transit privileges?

A. Yes, that is right.

Q. And now take up your exhibit 68, please.

A. Exhibit 68, consisting of 17 pages, is a statement showing the separately published rate factors applicable on grain traffic from beyond, from Chicago, Peoria, and St. Louis to representative destinations in Central Freight Association, New England, Trunk Line, and Virginia cities territories, and the present and proposed tariff provisions governing the application of such separately established rates. The application of each of these separately established factors is shown in the tariff notes contained on the exhibit, as indicated in the headings over the rates from each of the origins. In the headings over the rate columns, these tariffs are referred to by the numbers used by the publishing agent, while on pages 4 to 17, inclusive, where the notes are reproduced, they are referred to by ICC numbers. To connect the two portions of the exhibit, I [fol. 1973] should state that the tariff referred to as 535-A is issued by Agent B. T. Jones, and is his ICC 3300. The tariff referred to as 245-F is issued by Agent B. T. Jones, and is his ICC 3055, while the tariff indicated as 245-G is issued by Agent B. T. Jones and is his ICC 3356. I shall deal particularly with the factors from Chicago, since that is the most important reshipping point involved in this case. To destinations in Central Freight Association territory, there are in effect from Chicago, in addition to the local rates, three different proportional or reshipping rates. The proportionals indicated as "Trans-Mississippi" and as "Northwest" resulted from the decision of the Commission in Southwestern Miller's League versus A. T. & S. F. Ry. Co., 227 ICC 795, in which was involved the through rates via Chicago from the Missouri River, which is in Trans-Mississippi territory, and from Minneapolis and Duluth, which are in Northwest territory. The

exact application of these rates, insofar as grain arriving at Chicago via rail from the interior is concerned, is shown in detail in the notes reproduced in this exhibit. The reshipping rates from Chicago to Central Freight Association territory are applicable on rail grain from Illinois origins. Note 40 in Jones' tariff No. 535-A carries a specific provision making the northwest proportional applicable on both ex-barge and ex-lake grain.

Mr. Enoch: What note is that?

[fol. 1974] The Witness: Note 40; Note 40 is on page 13.

Mr. Day: I object to the statement by the witness that that does provide for the Northwest proportional on ex-barge grain. The tariff is the best evidence of its provisions; and as I understand, Mr. Schimmel has submitted the tariff provisions themselves; and Mr. Tannehill also introduced them. So in view of the controversy here, it seems to me there is no point in it.

Mr. Belnap: Mr. Tannehill testified precisely as Mr. Schimmel has now.

Mr. Cole: I beg to differ.

Mr. Day: You asked Mr. Tannehill questions, and I objected.

Mr. Belnap: And the objection was overruled, and he answered.

Exam. Taylor: The same ruling in this case.

Mr. Day: Exception.

Exam. Taylor: Exception noted.

Mr. Cole: May I be off the record?

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: Proceed.

The Witness (Continuing): It will be noted that this provides on ex-lake grain from Duluth the same proportional beyond Chicago as if the grain had arrived from Duluth [fol. 1975] or Minneapolis via rail. However, when this Northwest proportional is applied on ex-barge grain from Chicago, it results in a rate factor different than would be applicable if the grain moved into Chicago from the same origin via rail. Generally speaking, the Northwest proportional is higher than the reshipping rate applicable on ex-rail grain from Illinois origins, and is uniformly 3 cents higher than the Trans-Mississippi proportional which

is applicable on ex-rail grain from Kansas City. The proportional rates shown to destinations east of Central Freight Association territory presently apply on all grain from beyond Chicago, regardless of territory of origin, providing the grain arrives at Chicago via boat, barge or rail.

Mr. Day: I object to that statement, because that clearly is not in the tariff. There is nothing in the tariff about barge, is there?

Mr. Belnap: He says it is applicable if the grain arrives by barge.

Mr. Day: There is nothing in the tariff that says that.

The Witness: I claim that it does.

Mr. Belnap: I object to any objections, except on legal grounds. If it is simply cross-examination, I object. If the witness states a fact, that is subject to cross-examination.

Mr. Enoch: The witness does not state a fact, however, when he is making such statements as that.

Exam. Taylor: Let us see if he does; what part of this [fol. 1976] Note 40 covers that particular point?

Br. Belnap: He is not talking about Note 40 now.

By Exam. Taylor:

Q. What are you talking about?

A. I said the Northwest proportional rates shown to destinations east of Central Freight Association territory presently applies on all grain from beyond Chicago.

Q. Where do you find that in these notes that you refer to?

A. Well, present Note 40.

By Mr. Belnap:

Q. Are you talking about Note 40?

Mr. Day: You are going back to Central Freight Association?

Mr. Belnap: I thought you were going to Trunk Line.

Mr. Enoch: The Examiner asked him about his statement.

Mr. Belnap: It must be Eastern Trunk Line.

The Witness: That is Note 20.

Exam. Taylor: What page is that on?

The Witness: That is on page 4; it is my opinion that

that provision of Note 20 will apply to inbound grain via rail, barge, or boat on the reshipping rate.

By Exam. Taylor:

Q. What part of that rule—just point it out.

A. Reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish the outbound carrier freight bill or like documentary evidence as to the origin of the [fol. 1977] traffic and rate paid to the reshipping point.

Mr. Enoch: I think that this is more or less of an imposition, I do not say intentionally, on the Commission by the parties. Because when you are talking about the application of these tariffs, and confining ourselves—not placing before us every fact that it is so important should be before us, the provisions of the tariff that have to do with the application of the rates. There is a section of the tariff application of rates, and that section tells when these rates apply; and it only refers to these notes 40 and 20 when it shows special reference is here made to Notes 40 or Note 20. You canot tell anything about the final application of the rate until you have the application provision, as well as this note, in front of you. Obviously, the intention of Mr. Belnap and Mr. Schimmel is that this note either adds to or detracts from or modifies in certain ways the provisions relating to the application. How can you tell that until you have the application provisions in front of you?

Exam. Taylor: He is stating as the position that he is taking with reference to the application of the rates here in issue; and as such, I will receive it, and you can argue all those other points on brief, or you can cross-examine this witness as to any phase of his testimony. Proceed. I would like to ask, on the record, are all your mileages short-line mileages or tariff mileage, or will we have to [fol. 1978] take that up each individual time?

The Witness: The mileages shown to Ceneral Freight Association, Trunk Line, and New England were obtained from the Central Freight Association exhibits, and they represent short-line mileages.

By Exam. Taylor:

Q. Short-line rail mileages?

A. Rail mileages.

By Mr. Belnap:

Q. Those are the class rate mileages, are they not, Mr. Schimmel?

A. Yes, sir.

Exam. Taylor: If you do not make reference to individual cases where there is an exception to that statement, it will be understood throughout all of those exhibits.

By Mr. Belnap:

Q. Is that correct, Mr. Schimmel?

A. Yes, sir.

Exam. Taylor: Proceed.

The Witnes (Continuing): The proportionals to Trunk Line and New England territories and the Northwest proportional to Central Freight Association territory will not be made applicable on all ex-water grain if the proposed tariffs are made effective. Actually, the proposal only goes to the point of making these proportionals inapplicable on grain which arrives at Chicago via barge under port-to-port rates not on file with the Interstate Commerce Commission. The application still continues on ex-lake grain [fol. 1978a] which moves to Chicago on port-to-port rates of lake steamers which are not on file with the Commission and also still continues on ex-barge grain which moves under Federal Barge Line port-to-port rates insofar as the latter are on file with the Commission.

By Mr. Belnap:

Q. What is your exhibit 69?

A. Exhibit 69, consisting of all 11 pages, shows the present barge and rail, the proposed barge and rail, and the present all-rail rates on grain from the Illinois River landings and from Kansas City to representative Central territory and Eastern destinations. On page 11 blanks appear in both Notes A and B.

Mr. Enoch: What do you mean by proposed?

The Witness: Proposed in this hearing.

Mr. Enoch: Who is proposing any rates in this hearing? Don't you mean this, Mr. Schimmel: that if you follow the same practice in the future as you have in the past——

Mr. Belnap: Mr. Enoch, he is trying to correct some notes.

Mr. Enoch: Strike out my statements.

Exam. Taylor: Proceed.

The Witness (Continuing): In Note A the first blank should be filled in with exhibit 67, and the second blank with exhibit 68. In Note B the blanks should be filled in with Exhibit 67. I desire to make some corrections of this exhibit which I ask be made on the face of those distributed. [fol. 1979] On page 7 of the exhibit I desire to make the following corrections: Under the heading "All-Rail" as to the factors indicated as "rail beyond Chicago", which also necessitates some changes in the rates shown as the through all-rail rates. Opposite Cincinnati, Ohio, rail beyond Chicago should read "13" instead of "13.5" and should be indicated as transit balance with 25 cents as the through rate. Opposite Circleville, Ohio, rail beyond Chicago should read as a 13-cent transit balance of an 18-cent transit balance, and the through rate should be shown as 25 cents. Also eliminate the words "6th Class." Opposite Detroit, Michigan, rail beyond Chicago should be shown as a 10-cent transit balance instead of the 15-cent reshipping rate, and the through rate shown as 22 cents. This same correction should be made opposite Toledo, Ohio. In other words, the same as Detroit. On page 9 of the exhibit, opposite Baltimore, Maryland, export under the heading "Proposed Barge-Rail," the bottom figure should be indicated as 1.625 cents "more" rather than "less."

By Exam. Taylor:

Q. That is only in connection with Baltimore export?

A. Baltimore export.

Mr. Belnap: Mr. Examiner, this exhibit 67, and perhaps other exhibits of Mr. Schimmel, will indicate certain charges as present barge-rail or as proposed barge-rail; I think nobody is confused about the facts in this case. There are [fol. 1980] no published rates of any of these barge lines, other than the Federal in connection with a certain tariff item. So that there could be no through movement under rates on file with the Interstate Commerce Commission, which is the ordinary type of rate we apply the word "through" to. In both cases the purpose of this exhibit

is simply to indicate what the aggregate charges would be on a through movement by barge to Chicago and thence rail to destination. That is correct, is it, Mr. Schimmel?

The Witness: That is correct.

Mr. Enoch: The vice of that is that there may be somebody working on this case, as those of us will be who have attended this hearing, and may pay a great deal of attention to the exhibits. I do not think there is much excuse for setting up a situation of this kind just as though you were figuring out what the situation would be if I bring it in by truck and then turn it over to a rail line at Chicago, and set down on an exhibit the through rate making a part of that computation what it cost me. In that I might have my own work, but I would figure what it cost me, then put it down on an exhibit as a through rate.

Mr. Belnap: It does not have to be a private truck; it is the charges which barges assess to Chicago, plus rates which rail lines assess beyond.

Exam. Taylor: I think the record is very clear on the [fol. 1981] subject; and if anybody reading it did not catch it, there must be something wrong with him.

Mr. Cole: I would like to ask Mr. Belnap, in this exhibit 69 and in the other exhibits, wherever there is reference by the witness, or wherever the witness refers to the computation of the present barge-rail rates, it may be understood that that present through charge is computed upon the basis of his understanding of the application of the proportional rates beyond Chicago. Isn't that so, Mr. Belnap?

By Mr. Belnap:

Q. Well, that is correct, isn't it, Mr. Schimmel?

A. That is not only my own opinon, but others.

Q. He asked you only about that; that is correct that far, is it not?

A. Yes, that is right.

Q. It is your opinion?

A. Yes.

Q. And it is also the opinion of the Central Weighing and Inspection Bureau?

A. Yes, sir.

Mr. Enoch: Object to that; the Central Weighing and Inspection Bureau cannot possibly have an opinion on this.

I want to move Mr. Schimmel's answer to your question be stricken.

Mr. Belnap: You will find when the transit tariff was [fol. 1982] put in evidence that it was the duty under the tariff of the Central Weighing and Inspection Bureau to put on the outbound billing,—to define the applicable rate.

Mr. Enoch: You do not find any opinion there to express—you do not find any duty there to express any opinion as to the application of the tariff.

Mr. Belnap: They put the rate on the billing; that is a fact, is it not?

The Witness: They are the agents who rate the billing for the carriers. In other words, they are employed by the carriers.

By Mr. Belnap:

Q. Where you show the present application proportional with ex-barge grain, are you showing the rates which that Central Weighing and Inspection Bureau puts on the billing?

A. Absolutely.

Mr. Cole: If the interpretation as now made concerning the application of the present basis of rates is proved to be erroneous, then the through charges as you have them computed under your designations of present barge-rail rates are all incorrect, are they?

Mr. Belnap: That would obviously follow, Mr. Examiner. If it is not the rate, it is not the rate; that is what it come down to.

Mr. Enoch: Where would the Central Weighing and In- [fol. 1983] spection Bureau get this rate that you say it puts on the billing, if it did not get it from the document which you surrender to the bill to support the application for the outbound rate; where would they get it if they did not go to that document?

The Witness: Surrender of that original document?

Mr. Belnap: He wants to know where they get the outbound rates.

The Witness: Out of the railroad tariffs.

Mr. Enoch: Did you say that the Central Weighing and Inspection Bureau puts this rate on the billing?

The Witness: Yes.

By Mr. Enoch:

Q. What rate are you talking about?

A. Any rate in Central Freight Association or Trunk Line territory; they rate every shipment.

Q. Did you refer to the inbound barge charge when you said rate in that connection?

A. Yes.

Q. Now, where would they get that charge if they did not get it from the document filed in your office, which you filed with the Central Weighing and Inspection Bureau to engage the outbound proportional rate?

A. Not filled out in our office.

Exam. Taylor: I think this is leading quite a bit into cross-examination.

[fol. 1984] By Mr. Belnap:

Q. Will you proceed to describe your exhibit 69, Mr. Schimmel?

A. This exhibit simply brings together the separately established rate factors shown in my two previous exhibits and compares the present and proposed barge and rail rates with the all-rail rates, the differences in favor or against the all-rail rates being shown in each instance. Taking Morris and Seneca as representative, the differences are in favor of the present barge-rail adjustment in Central Freight Association territory in amounts ranging from three-fourths of a cent per hundred pounds at Louisville to 7.25 cents per hundred pounds at Circleville. To destinations east of Central territory, the difference in favor of the barge-rail adjustment is uniformly 5.75 cents per hundred pounds on both domestic and export traffic. Under the proposed barge and rail adjustment the difference in Central Freight Association territory would range from 3.75 cents per hundred pounds in favor of the barge-rail at Detroit to 2.75 cents in favor of the all-rail at Buffalo and Pittsburgh. To Trunk Lines destinations, the proposed barge-rail rates would exceed the all-rail rates uniformly by 2.75 cents per hundred pounds. Taking the other Illinois River origins, these differences vary but they are all shown on the exhibit. From Kansas City to Central territory destinations the present barge-rail adjustment shows differences ranging from 1.625 to 3.125 cents less

[fol. 1985] than the all-rail, the difference to destinations to the east thereof being uniformly 4.625 cents less than all-rail. Under the proposed adjustment the differences will vary from .125 cents less than all-rail to Toledo and Detroit up to 5.875 cents in excess of all-rail to Circleville. From Kansas City to eastern destinations the proposed barge-rail combination will exceed the all-rail through rates uniformly by 3.875 cents. It has been stated that interstate rail rate factors to and from Chicago were made effective for the purpose of equalizing the Chicago market and gateway with other markets and gateways. This, however, is true only to a limited extent. There is an equalization of the Chicago gateway with the Peoria and St. Louis gateways on grain from the Missouri River and beyond, and there is also an equalization of the Chicago gateway with the Peoria gateway on grain from Minneapolis, Duluth, and beyond. That is to say, from the interior the rate to these gateways will vary, but the variation will be offset by differences in the opposite direction on the factors from the gateways. As a result, the through rates as made on combination on the gateways are the same via these markets and gateways where this equalization takes place. However, from Illinois territory, which is the important producing territory involved in this case, no such equalization takes place in respect of rates to either Central Freight Association or Eastern Trunk Line territories, except in a few cases. [fol. 1986] That is to say, the rail rate factors from the Illinois River landings to Chicago, plus the reshipping rates to Central Freight Association territory and the proportional rates to Eastern Territory shown in exhibit 68 are not, generally speaking, equalized by separate inbound factors to any other market or gateway, plus reshipping or proportional rates therefrom. Furthermore, as to grain from Kansas City where there is an all-rail equalization of Chicago with Peoria and St. Louis, the rate factor which the carriers now apply on ex-barge grain to Central Freight Association territory is not the separately established rate from Chicago to destination used in equalizing Chicago with Peoria and St. Louis on an all-rail movement. This is because the ex-barge grain from Kansas City pays the Northwest proportional which is uniformly 3 cents higher than the Trans-Mississippi proportional, the latter being a part of the equalized adjustment.

Exam. Taylor: I do not gather that by your statement. Off the record.

(Discussion outside of the record.)

By Mr. Belnap:

Q. In this statement you just made, are you talking about bulk grain moving in barge-load quantities?

A. Yes, I am talking about bulk corn.

By Exam. Taylor:

Q. And not the package grain referred to by Mr. Oliphant yesterday?

A. That is correct.

[fol. 1987] Mr. Day: I had understood your previous ruling to the effect that anything this man said about the application of tariffs was his view of it.

Exam. Taylor: That is correct.

Mr. Day: And the view of those supporting him, perhaps.

Exam. Taylor: That is correct.

Mr. Day: On that account, I did not think it would be proper for me to break in with any objection; but we do disagree with the witness.

Exam. Taylor: That is correct.

Mr. Belnap: Mr. Day, the witness just testified the carriers now apply certain proportionals.

Mr. Day: All I say that under the tariff the Trans-Mississippi basis applies on such grain.

Mr. Belnap: He testified what the carriers apply.

Mr. Day: I don't know whether this witness knows what the carriers apply. Do they apply it for you?

The Witness: You are talking about bulk rates from Kansas City?

By Mr. Day:

Q. Yes, by barge.

A. I have not had any of that in recent years.

Q. That is what I thought.

A. I did have it, and the Northwest application was applied.

Q. Some years ago?

A. Well, 1936 and 1937 I had barges come in from Kansas City.

[fol. 1988] Q. Who handled them?

A. Farmers National Grain Corporation.

Q. I mean, did the Federal Barge Line handle them?

A. Yes.

Q. And they moved out by rail on Northwest shipping rates?

A. If the shipment was into Central Freight Association it moved on Northwest, and if into Trunk Line and New England it moved on the reshipping rate.

Mr. Belnap: May we continue now, and leave the cross-examination until later?

Mr. Day: I did not break in for cross-examination, but only to make it clear that we were not at all acquiescing to what the witness had stated about the tariff application.

Exam. Taylor: Proceed.

The Witness (Continuing): Furthermore, there are many cases in which the all-rail adjustment the through rates from interior Illinois points to Central Freight Association destinations are less than the combination of the separately established factors to and from Chicago. This is illustrated to some extent by my exhibit 69, whenever, in the last column, I show that the factor beyond Chicago is based on a transit balance, rather than on a reshipping rate.

By Mr. Belnap:

Q. You are referring to the all-rail rates now?

A. All-rail rates.

[fol. 1989] Exam. Taylor: We will take a recess for five minutes.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; ready to proceed? Proceed, Mr. Belnap.

By Mr. Belnap:

Q. I think, Mr. Schimmel, you just called attention to the places on your exhibit 69 where rail beyond Chicago was shown as a transit balance, pointing out that that indicated the through rate was less than the combination of the sepa-

rately-established factors to and from Chicago. Have you some few additional illustrations of that, other than those shown on your exhibits?

A. Yes, I have. There are many additional situations where a similar situation obtains, that is, where the reshipping rate from Chicago is not in fact used in the construction of the through rate.

Q. You are talking about Central Territory destinations, are you not?

A. I am, for example from all Illinois origins shown on my exhibit a through rate is maintained to Battle Creek, Michigan, one of the most important consuming points for corn in Central territory, of 19 cents. The I.P. rate from these same origins to Chicago range from 9.5 cents at Morris and to 12 cents at Havana. Consequently, the through rates made on combination would range from 24.5 cents to 27.5 cents.

Q. What is the reshipping rate from Chicago to Battle Creek?

[fol. 1990] A. 15 cents. (Continuing:) It will be noted that such combinations exceed the going through rate to Battle Creek from these same Illinois origins by from 5.5 cents to 8 cents. Consequently, as to Battle Creek and other destinations enjoying a similar adjustment, the reshipping rate from Chicago, which in the absence of a through rate, would be applicable on ex-rail Illinois grain, is not used, nor has it any relation to the through rate, nor is it used in equalizing Chicago with any other market or gateway. Detroit, Michigan, is another destination which enjoys some through rates less than the combination of separately established factors to and from Chicago. For example, from the river point Lacon, Illinois, the I. P. rate to Chicago is 12 cents, and the reshipping rate from Chicago to Detroit is 15 cents, the combination being 27 cents. However, the through rate from Lacon to Detroit is 5 cents less, or 22 cents. This is similar to the situation shown at Toledo on page 6 of my exhibit 69. As another example, from Havana, Illinois, to Columbus, Ohio, the Chicago combination is made of an I.P. rate of 12 cents to Chicago, plus a reshipping rate of 19 cents, totaling 31 cents. The through rate, however, is 3 cents less, or 28 cents. Here is another example of where the reshipping rate from Chicago is not used in the construction of the through rate, nor does it

result in equalizing the Chicago gateway with any other gateway or market.

Q. What is your exhibit 70, Mr. Schimmel?

[fol. 1991] A. Exhibit 70 is a statement which compares the present ex-lake rates from Lake Erie ports with the local rates from the same ports to eastern seaboard, as well as to destinations in Central Freight Association territory. The ex-lake rates from Buffalo and Erie are published to include elevation of one cent per bushel, which, in the case of corn, is the equivalent of 1.79 cents per hundred pounds. In order to obtain the true difference between the local and proportional rates from the rail service involved, I have deducted the amount included for elevation before setting down the ex-lake rates. The purpose of this exhibit is to show the practice of the Eastern lines in providing rates lower than their local rates on grain which has had a prior haul by water. The application of these ex-lake rates is in no part conditional on the grain having had any haul by rail prior to arriving at the port of reshipment. In fact, all of these rates will apply on Illinois River grain shipped to Chicago via barge and thence to the Lake Erie ports indicated by lake carrier vessel. Nor does the application of these ex-lake rates depend on the prior water transportation rates being on file with the Commission.

Exam. Taylor: Are these ex-lake rates published as proportional rates or as just straight ex-lake rates?

The Witness: As ex-lake rates.

By Mr. Belnap:

Q. What do you mean by that, Mr. Schimmel?

[fol. 1992] A. Well, that they have had a prior haul by water into the Lake Erie port.

Q. The same way that the rates out of Chicago are published based on a prior haul by water; is that correct?

A. That is correct.

Mr. Enoch: I do not understand that; I thought your answer to Examiner Taylor was perfectly clear.

Mr. Belnap: Except I do not understand there is any difference between an ex-lake and a proportional rate, if the traffic is simply conditioned on having had a prior haul by water; that is the basis for the application of the rate.

Maybe the Examiner draws some distinction of which I am ignorant.

Exam. Taylor: You mean that the term ex-lake and the term proportional are synonymous?

Mr. Belnap: I think so.

Mr. Enoch: Is that what the witness meant?

The Witness: Yes, that it originated beyond, and took a proportional or ex-lake rate. We refer to that as proportional or——

Mr. Enoch: How are they referred to in the tariff?

The Witness: They are referred to as ex-lake rates.

By Exam. Taylor:

Q. In the tariff?

A. In the tariff.

Mr. Belnap: Do you have in mind that there is some [fol. 1993] difference from a legal standpoint.

Exam. Taylor: No, I just wanted him to state how they were published in the tariff. We can argue the other point later on, if there is another point.

Mr. Belnap: If there is another point, and either the bench or the parties have it in mind, I would be glad, and it would help me in briefing this record, if you tell me what it is.

Exam. Taylor: Off the record:

(Discussion outside of the record.)

Exam. Taylor: Proceed.

The Witness: In the lower blocks of exhibit No. 70 the rates should be shown as applying from Cleveland, Ohio, and Sandusky, Ohio, and Toledo, Ohio, to Cincinnati, Decatur, Evansville, and so forth, instead of as shown. It will be noted that the difference between the local and the ex-lake rates from Buffalo to seaboard is either 4 or 5 cents, in the case of domestic traffic, and ranges from 12 to 14.5 cents on export traffic. From Chicago to seaboard the proportionals presently applicable on ex-barge grain are lower than the local rates uniformly by 8.5 cents in the case of both export and domestic traffic. It will be noted that the ex-lake export rates shown on this exhibit to Boston are the same as to New York. This rate parity Boston with

New York, was prescribed by the Commission in Maritime [fol. 1994] Asso., Boston Chamber of Commerce versus A. A. R. R. Co., 95 ICC 539, 126 ICC 199, in which the Commission predicated its finding on the fact that the ex-lake rates were in the nature of proportional rates and covered a service which was only a portion of a through water and rail service. In the bottom block of this exhibit, I have included rates from Lake Erie ports to some destinations in Illinois, although, except under unusual crop conditions, such as were experienced in 1934 and 1935, these rates will not move any substantial quantity. However, when there is a movement those rates apply, and it is interesting to note that from Sandusky, Ohio, to Decatur and Peoria, Illinois, and from Cleveland, Ohio, to Peoria, Illinois, the carriers provide a proportional applicable on ex-water grain 6 cents below the local rate, and from Toledo, Ohio, to Decatur and Peoria, Illinois, a proportional applicable on ex-water grain of 3 cents below the local rate. In comparison therewith, Tannehill's exhibit 10 shows to Cleveland from Peoria a local rate higher than the reshipping rate by 2 cents, higher than the Northwest proportional rate by 3.5 cents, and higher than the Trans-Mississippi proportional by 4.5 cents. The same exhibit shows from Chicago to Cleveland that the proportional, which is applicable on ex-barge grain, is only 1.5 cents less than the local rate.

By Mr. Belnap:

Q. What is your exhibit 71, Mr. Schimmel?

A. Exhibit 71 is a statement which takes Morris, Illinois, [fol. 1995] as a representative Illinois River landing and shows to eastern seaboard the present and proposed barge-rail rates, and the all-rail rates as taken from my previous exhibits, as compared with the barge-lake-rail rates via Buffalo and rail-lake-rail rates via Buffalo. In the top half of the exhibit, under "Barge-Lake-Rail" and "Rail-Lake-Rail" headings, the elevation at Buffalo as included in the ex-lake rate is shown separately and deducted from the aggregate through charges. However, the aggregate through charge is the important item on this exhibit, since it provides the comparative transportation cost via the competing routes here under consideration. The lake rate from Chicago to Buffalo shown in this exhibit of 6.25 cents per hundred pounds reflects the average cost of shipping

corn via lake from Chicago to Buffalo during the last half of 1938,——

Q. Cost to whom?

A. Cost to the shipper.

Q. To you?

A. To us. rate then being 3.5 cents per bushel. It should be stated that conditions affecting lake rates were somewhat unusual in that period and normally lake rates from Chicago to Buffalo will vary between 2 and 2.5 cents per bushel, which would figure 3.57 and 4.46 cents per one hundred pounds.

Q. Are there occasions when you have lake rates even less than 2 cents a bushel?

A. Yes; in my experience I have seen rates lower than [fol. 1996] that; in fact, as low as a cent and a half a bushel.

Mr. Day: That is Chicago to Buffalo?

The Witness: Chicago to Buffalo.

By Mr. Belnap:

Q. And over a period of years you would have to take something——

A. That is correct.

Q. And if you did show in this exhibit a lower rate for the lake service Chicago to Buffalo you would correspondingly reduce the aggregate charges shown under the head "Barge-Lake-Rail" and "Rail-Lake-Rail"?

A. That is correct.

Mr. Enoch: I do not understand this reference to some rate in effect Chicago to Buffalo by lake.

The Witness: That has been the prevailing rate during the last half of the 1939 season; that is the rate that we have paid.

By Mr. Enoch:

Q. Have you used any tramp steamer?

A. I wouldn't know whether they call them tramp or not. We engage these steamers through vessel brokers; I think some of them are the Canadian Steamship Lines, and the American Bottom Lines. I have never had the question come up in regard to whether they are tramp or not.

If the proportional rates are made not applicable on ex-barge grain, the only avenue by which grain covered by

barge billing can then move to the east is via the lake. The [fol. 1997] purpose of this exhibit is to show what would be the aggregate cost of transportation to seaboard if Morris grain were so moved in comparison with what grain now pays via the barge-rail route and what it would pay via the other routes indicated on the exhibit. Under the present adjustment, the barge-rail rate from Morris to New York is 29.75 cents, a trifle less than the 30.29 cents per hundred pounds which it would cost via barge to Chicago, lake to Buffalo, and thence rail beyond, and the latter figure in turn is a trifle less than the combination of the lake local to Chicago, lake to Buffalo, and rail beyond of 31.54 cents. However, both of these latter combination rates, that is, the barge-lake-rail and the other the rail-lake-rail are substantially less than the proposed barge-rail rate of 38.25 cents, and are also substantially less than the all-rail rate from Morris to New York of 35.5 cents. These differences in favor of the routes via the lake would be shown as even greater in a period of normal charges for lake transportation. The bottom half of the exhibit deals with the export adjustment, the barge-lake, as well as the rail-lake, factors up to Buffalo being the same as in connection with the domestic movement. East of Buffalo, however, the rail carriers who are respondents in this case, provide lower ex-lake rates on export than on domestic traffic, and a different rate is ordinarily maintained during the period of open navigation in order to compete with the canal than [fol. 1998] during the period of closed navigation. For example, to Baltimore, Maryland, the ex-lake export rate from Buffalo during this past year was 7.95 cents per hundred pounds during the period of open navigation, and this included elevation at Buffalo. This rate now is 11.79 cents per hundred pounds. In I. & S. Docket 4618, recently decided, the Commission fixed 9.5 cents as a minimum rate. During the past season the combined barge lake-rail combination from Morris to Baltimore on export grain was 18.45 cents per hundred pounds. If the carriers published the rates authorized in I. & S. Docket 4618, the combination will become 20 cents per hundred pounds. This is substantially less than the proposed barge-rail rate of 28.25 cents per hundred pounds, and also is substantially less than the all-rail rate on export grain from Morris to Baltimore of 25.5 cents per hundred pounds. Grain always tends to move via the route providing the lowest charges for transporta-

tion, and this exhibit plainly indicates that during the period of open navigation the barge-lake-rail route service furnished such a route. I should again point out that the ex-lake proportionals east of Buffalo used in computing these combination charges are not conditioned on the grain having had prior rail transportation, nor are they conditioned on the water rates up to Buffalo being filed with the Interstate Commerce Commission.

Mr. Enoch: Is that the first time you referred to those ex-lake rates as proportional rates?

[fol. 1999] Mr. Belnap: I think not.

Mr. Enoch: Do you recall having referred to them as proportional rates before?

The Witness: I did awhile ago, in answer to your question when you were asking about——

Mr. Enoch: But you have not, independent of any question referred to those lake rates as proportionals?

The Witness: Not other than my conversation with you a few moments ago.

Mr. Belnap: May we proceed?

Exam. Taylor: Proceed.

The Witness (Continuing): Under the present adjustment the barge-rail routes are fairly competitive with the all-rail routes, and this provides for the rail carriers east of Chicago an opportunity to participate in the transportation of the grain grown nearby to the Illinois River landings. However, if the proposed adjustment were made effective, that opportunity would be entirely lost, due to the much lower charges provided in connection with the barge-lake-rail route than in connection with the barge-rail route.

By Mr. Belnap:

Q. What is your exhibit 72?

A. Exhibit 72 compares from Duluth to Chicago and from Chicago to ports on Lake Erie and to Montreal, Quebec, Canada, the lake rates as they prevailed in the last half of the 1939 season with the local and proportional rates [fol. 2000] applicable for an all-rail movement. The purpose of this exhibit is to show that where water transportation is available we find water rates are very substantially below the corresponding all-rail rates. For example, grain can go via lake from Duluth to Buffalo for 6.75 cents per

hundred pounds as compared with 47.5 cents per hundred pounds for an all-rail movement.

Q. Go ahead.

A. The Great Lakes are used very extensively in the transportation of grain and 73 shows the extent to which this is true, both as to receipts and shipments, for the years 1934 to 1937, inclusive, for the ports of Duluth, Superior, Milwaukee, Chicago, Toledo, Erie, and Buffalo. The receipts and shipments shown on this exhibit are stated in tons and are taken from the United States Army Chief of Engineer's Annual Reports, Part 2, for the years indicated. Most of the figures referred to in this record as to quantities of grain have been stated in bushels, and if it is desired to restate any figures shown on this exhibit in terms of bushels that may be done by using 33 bushels, plus 20 pounds for wheat and soy beans, 35 bushels, plus 40 pounds for corn and rye, 41 bushels, plus 32 pounds for barley, and 62 bushels, plus 16 pounds for oats.

Q. Each of those is per ton?

A. That is per ton quantities, per ton in bushels. I have for some of the lake ports additional figures which indicate the extent to which the waterways are being used in the [fol. 2001] transportation of grain. In 1929, according to the Corn Exchange at Buffalo, New York, the receipts via water in bushels stated in round figures were 103,000,000 wheat; 26,000,000, corn; 11,000,000, oats; 12,000,000, barley; 4,000,000, rye; and 4,000,000 soy beans. All of these receipts were entitled to move outbound on the ex-lake rates shown in my earlier exhibits, regardless of whether any of this grain had prior rail transportation or not, and regardless of whether the rates on which it moved into Buffalo were on file with the Commission or not. At Duluth-Superior, in the period 1935-1939, inclusive, the annual all-rail receipts of all grain in bushels in round figures ranged from a low of 28,000,000 to a high of 120,000,000 and the receipts via water from a low of 178,000 to a high of 6,000,000. For the same years, the shipments via rail ranged from a low of 4,000,000 to a high of 21,000,000 and the shipments via water from a low of 27,000,000 to a high of 105,000,000. It has been suggested that little corn moves out of Duluth via water. The fact is in 1938, 27,000,000 bushels of corn and in 1939, 13,000,000 bushels of corn were shipped out from Duluth via the lake, and all of that corn, upon

arrival at port of destination, became entitled to the use of the proportional rates beyond, lower than the local rates.

Mr. Day: You do not show the 1938-1939 figures in your exhibit?

[fol. 2002] The Witness: No, this is additional information, in addition to that exhibit 73.

By Exam. Taylor:

Q. Where did that corn go, all the corn that you just mentioned; did any of it go to Chicago?

A. Some of it might have come to Chicago.

Q. A very small percentage?

A. A very small percentage, most of it went to Buffalo, and that end of the lakes. I should state that the corn shipments via lake from Duluth in 1938-1939 very substantially exceeded the shipments via lake in the earlier years mentioned, the bushels shipped via lake in 1935 being 1,000,000; in 1936, 2,300,000; and in 1937, 3,500,000. The bulk of the local shipments from Duluth move to ports, other than Chicago, although as tonnage statistics already in this record show, there have been years when substantial volume has come to Chicago.

By Mr. Belnap:

Q. Now, as I understand it, Mr. Schimmel, your exhibit 73 carried the latest year for which the average you there cite was available; is that true?

A. That is correct.

Q. That is the reason you had to supplement by these additional figures?

A. Correct.

By Exam. Taylor:

Q. Where did you get these supplemental figures?

[fol. 2003] A. From our offices in Duluth and Superior and Buffalo.

Q. I mean the source of that information; where did they get it?

A. They got it from the Chamber of Commerce there, or the grain office there, the grain exchange.

Q. It was not the same source as shown on this exhibit?

A. No, sir.

By Mr. Belnap:

Q. Each of these points have an exchange which compiles official records?

A. Yes; and the same, I presume, at Chicago.

Q. What is your exhibit 74?

A. My exhibit 74 deals with the matter of through transportation charges from Duluth and Superior to eastern seaboard, comparing the lake and rail combination made over Lake Erie ports with the through rate via the all-rail route through Chicago. The extent to which the lake and rail combination rate is less than the all-rail rate being indicated in each instance. As the exhibit is prepared, the elevation included within the ex-lake rate has been deducted before computing the difference. This is on the theory that if Duluth grain came to Chicago via rail it would pass through an elevator at an additional cost over and above the rail rates. Taking the first item, the exhibit shows that it costs 11.24 cents per hundred pounds less for transportation over a lake and rail route to Baltimore through Buffalo, elevation being excluded, than over the [fol. 2004] all-rail route through Chicago. Those for whom I appear have not asked that a penalty be put against the ex-lake grain at Buffalo in order to improve Chicago's competitive position. We appreciate that Buffalo is fairly entitled to the benefit which flows to it from having water service from Duluth. It, of course, is possible for Chicago to participate in a lake and rail movement from Duluth by trans-shipping the grain at this port. The resultant charges to eastern seaboard when grain is so handled, as compared with through all-rail rates, is shown on exhibit 75. The next to the last block on the sheet shows that the cost of so handling grain to Baltimore for domestic movement is 39.75 cents, as compared with a net cost, elevation being excluded, of 24.75 cents through Buffalo, as shown on my previous exhibit. This exhibit shows that the combination lake and rail rate from Duluth via Chicago to eastern seaboard is uniformly 6.25 cents per hundred pounds less than the all-rail rate from Duluth via Chicago.

Q. That again is based on lake operations as they prevailed under unusual conditions as they prevailed in the latter part of 1939?

A. That is correct.

Q. And in a normal period for lake charges, that difference would be substantially lower, as you have shown; is that so?

A. Yes. I have heretofore stated that the proportionals presently applicable from Chicago on grain from the Illi- [fol. 2005] nois River landings were not made effective for the purpose of equalizing all-rail rates from such interior origins to eastern destinations with all-rail rates from the same origins via another market or gateway to the same destinations. However, in the case of grain from Duluth brought into Chicago via lake and then reshipped on the proportional rate, as is presently permitted, and as is proposed to be continued in the tariffs under suspension, the proportional beyond Chicago is the separately established rate factor used in equalizing the Chicago gateway with the Peoria gateway on Duluth grain moving all-rail.

Q. What is your exhibit 76, Mr. Schimmel?

A. Exhibit 76 is a statement showing rates on grain from the Indiana origins indicated to Chicago, showing both the local rates and the proportionals applicable on traffic reshipped from Chicago via lake. In this case, the reshipment via water permits the shipper to obtain inbound transportation to Chicago for six cents less than he would have to pay on grain from the same stations consumed locally at Chicago. In connection with these lake proportionals, there is no requirement that the outbound movement via lake be under rates on file with the Commission. There are no arrangements for operating a through route between the carriers who publish these lake proportionals to Chicago and the boat lines which handle the grain from Chicago. The fact I have just stated is likewise true as [fol. 2006] to the lake and rail movement from the head of the lakes via Chicago, via Lake Erie ports, and via Georgia Bay ports to eastern destinations. In all those cases, just as in the case of the present application of the proportional rates on ex-barge traffic, the rail rate application is one contained entirely in the tariffs of the rail lines, and neither the barge lines nor the boat lines on the lake have anything to do with it.

Q. Mr. Schimmel, you have had a number of illustrations of rail proportional less than the corresponding local rates, which are conditioned solely on the fact that the grain has had prior transportation by water on port rates not on file with the Interstate Commerce Commission; are there

any other rates under prior adjustments where it is the common practice to find a rail rate in the nature of a proportional lower than a corresponding local rail rate made applicable on traffic which has had a prior movement on an unfiled water rate?

A. Yes.

Mr. Enoch: Did you refer to proportional rates lower than the local rates in your question?

Mr. Belnap: I said rates in the nature of a proportional, lower than the local rates.

Mr. Enoch: The first part of your question did not say that.

Mr. Belnap: He had given certain illustrations; then [fol. 2007] I asked him certain questions.

Mr. Enoch: You refer, then, to such examples as given by Mr. Schimmel, naming ex-lake rates?

Mr. Belnap: You mean what I referred to before asking the question?

Mr. Enoch: No; may we have that question read, please.

(Question read.)

Mr. Enoch: Now, my question is when you referred to citations, Mr. Schimmel has made, of proportional rates lower than the locals, do you have in mind ex-lake rates, and rates of that character?

Mr. Belnap: I have in mind simply the rates shown in his exhibits; 76 is one of them.

Mr. Enoch: Does that include ex-lake rates?

Mr. Belnap: That includes ex-lake rates, as well as ex-barge and ex-lake rates from Chicago.

Mr. Enoch: All right.

Exam. Taylor: Can you answer the question, Mr. Witness?

The Witness: Yes. The rate adjustment on bituminous coal from eastern fields, known as the lake cargo coal rates, provide an outstanding example of such a rate adjustment. To give a specific example, from the New River district on the C. & O. in West Virginia to Toledo and Sandusky, Ohio, the rail carriers published local rates on bituminous coal, in carloads, of $2.74 per ton. They also provide a rate of [fol. 2008] $2.06 on coal which moves beyond Toledo or Sandusky, Ohio, by lake (C. & O. Tariff No. 100-H, I. C. C. 12453, N. Y. C. Tariff No. 287-B, I. C. C. L. S.-C 296). There

is a tremendous movement of coal on large cargo rates of this character which moves beyond by water to the head of the lakes. As indicating the exact extent to which rates of this character are used on coal going beyond the ports, the tonnage handled in 1938 on the lake cargo adjustment from all producing districts to Sandusky and Toledo, Ohio, was 16,599,168 tons via Toledo and 6,970,913 tons via Sandusky. There are also a number of rates on coal published from mines to Ohio River landings applicable to coal moving beyond by river under barge rates not on file with the Commission which are lower than the corresponding local rates. For example, from the Logan Coal Field in West Virginia, to Huntington, West Virginia, the local rate on bituminous coal, in carloads, is 87 cents per ton, and the proportional rate applicable on coal moving beyond via barge is 55 cents per ton (C. & O. Ry. Co. Tariff I. C. C. 12257 and 12258). Similar rates are maintained from mines in northeast Kentucky to Catlettsburg, Kentucky. In B. & O. Tariff I. C. C. No. 2908 is maintained from Group 1 in West Virginia to Glenwood, Pennsylvania, on the Ohio River, a rate on bituminous coal, in carloads, of $1.25 per ton when the coal moves beyond by barge or boat, while the local rate is $1.40. There are also rates on coal published from ports [fol. 2009] ports on the Ohio River to interior destinations in Indiana and Ohio which are made applicable by the terms of the tariff only on coal which has had a prior movement by river to the origin point from which the rail carrier names its rate. For example, such rates are published by the Pennsylvania Railroad from Cincinnati, Ohio, Louisville, Kentucky, and other Ohio River points in Pennsylvania Tariff No. 61, I. C. C. 2141. Similar rates are published by the New York Central in its coal tariff I. C. 154-E, I. C. C. (CCC & St. L.) No. 8514. The rates in this latter tariff apply to interior points in Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin, and their application is provided by tariff note which reads: "The rates contained herein on bituminous coal, carloads, apply on bituminous coal when arriving at Addyston, Ohio, Cincinnati, Ohio, Jeffersonville, Indiana, or North Bend, Ohio, via the Ohio River and will not apply from intermediate stations.

Mr. Enoch: Off the record, if we may.

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: Proceed.

The Witness (Continuing): As to commodities, generally, it is common knowledge that carriers maintain between interior points and the various ports served by them, a rather widespread adjustment of coastwise rates which are lower than their local rates between the same points, the [fol. 2010] coastwise rates being applicable only on traffic moving to or from the ports by coastwise water service. Such rates apply even though the water service from or to the port, as the case may be, is under port-to-port rates not on file with the Commission.

By Mr. Belnap:

Q. What is your exhibit 77, Mr. Schimmel?

By Exam. Taylor:

Q. Before you leave exhibit 76, we have mentioned these lake cargo rates, ex-barge moving through from Ohio River crossings; there are transit rules that would be involved in those cases?

A. No; the lower proportional rate is contingent, in the case of the lake cargo rate, of a haul subsequent to the rail haul.

Mr. Belnap: What do you mean by transit rule, Mr. Examiner?

Exam. Taylor: Such as we have in this case.

Mr. Belnap: You mean where the carriers assure themselves that the rates are applicable.

Exam. Taylor: Yes, or transit privileges like we have on grain, elevation and so forth. These outbound rates from Lake Erie ports on coal are published as lake cargo rates?

The Witness: Yes; naturally, the carriers would police the tonnages in order to see that that tonnage would come over the lake lines to the head of the lakes.

By Mr. Belnap:

Q. Mr. Schimmel, isn't this true: that any time you have a rate whose application is predicated on the traffic having had a prior movement, whether being by rail or barge line [fol. 2011] or lake vessel, that the carriers have to police the application of that rate?

A. Sure; that is true.

Q. Then, to assure themselves—they have to assure themselves that traffic has complied with the condition which merits the rate applicable?

A. Absolutely; and that is the reason they have an inspection bureau; they are the policing agents.

Mr. Day: You mean for coal?

The Witness: For grain; I don't know about the policing arrangement so much on coal.

By Mr. Belnap:

Q. Where they have a tariff which provides policing arrangement or not, the obligation is on them to police for the application of the rate?

A. Yes.

Q. So far as the proportionals on ex-lake and ex-barge tonnage from Chicago, that also happens, the carriers police it?

A. Sure.

Q. And the transit tariff carries the policing requirements?

A. Yes, that is correct.

By Exam. Taylor:

Q. Is that the case with the coal, though?

Mr. Belnap: Mr. Examiner, I don't know; I don't know whether Mr. Schimmel knows whether there is a tariff which specifies how it is to be policed. But whether they put it in the tariff or not could not change one iota the [fol. 2012] application of the rate, just as Mr. Tannehill testified.

Mr. Cole: May I ask a question, in clarification?

Exam. Taylor: Surely.

By Mr. Cole:

Q. Mr. Schimmel, you said you have seen some of these coal tariffs; are these coal rates that you have referred to published at all in the same way as grain rates; that is, are they published as proportional rates?

A. Yes, they are named as proportional rates.

Exam. Taylor: You did not state that to me; that is different.

Mr. Cole: That is what I asked; if you had a tariff, does the tariff carry a designation of that rate as a proportional rate, or specific lake cargo coal rate?

Mr. Belnap: Were you inquiring simply about the name that the carrier puts up at the top of the sheet.

Mr. Cole: Yes.

The Witness: I believe that is shown as lake-cargo rate; but that rate is lower than the local rate.

By Mr. Cole:

Q. That is all right; what I want to understand from you is that all these other tariffs you referred to on coal, they publish a rate that is called lake cargo coal rate; isn't that so?

A. Yes; but in connection with these river rates on the Ohio River, the word "proportional" appears in the tariff.

Q. In what tariff?

[fol. 2013] A. These tariffs that are referred to.

Exam. Taylor: You referred to one there covering the rates through Addyston, Ohio?

The Witness: Yes.

By Mr. Belnap:

Q. Was that a rate from the Logan field to Huntington?

A. I will find it here in a moment: yes, it shows here on the quotation the rates made on the Logan field, from the Logan field to Huntington, the local rate was 87 cents, and the proportional rate beyond by barge was 55 cents.

Mr. Belnap: Mr. Examiner, I think we better verify the heading of that.

Mr. Cole: That is all I am asking for; in other words, I want to see how that rate and that rate column is designated that Mr. Schimmel is now calling a proportional rate.

Mr. Belnap: Yes.

Mr. Enoch: I want to make a motion here to strike all this testimony from the record that has to do with the citation of these different tariffs, and the witness' construction of that tariff, unless Mr. Belnap is willing to put in evidence here either the tariff upon which the conclusion

of the witness is based or the items in the tariff upon which the conclusion of the witness is based. I think that is the only fair way for us to find out what this is all about. Now, Mr. Schimmel,—there is just a bare possibility he [fol. 2014] may be wrong in construing that tariff.

Mr. Belnap: That is unquestionably so; any of us can make mistakes in construing tariffs; the thing Mr. Schimmel can do in the normal way before the Commission is state what the rates are and give reference to them. It is a novel way for me, where you are supposed to bring the tariffs here and put them in evidence.

Mr. Enoch: I am sure my suggestion is not novel.

Mr. Cole: Isn't there a vast distinction between these two sets of circumstances: if we refer to rates 76, 94, 15,—we are referring to rates,—and then cite a tariff as authority for that rate, in which event it is completely unnecessary to bring that tariff in. But now we have a situation here where we are having our attention called to various provisions of the tariff, various rules that are set out. Now, you cannot refer to that in the same way. This man and the other man have called attention to various rules; they say look in tariff so-an-so for that rule. A great many times when you look for that rule, you will find they give you cross reference to something else, or that there will be a column heading with a couple of notes that will refer not only to that rule he gave but some other rule. We have here a nice little problem in conjunction with tariff interpretation. If there are other rules, I believe those rules should be brought here and shown to us.

[fol. 2015] Mr. Belnap: Maybe I can clear it up with this statement, Mr. Examiner: Mr. Schimmel does not offer this evidence as to rates on other commodities lower than local rates conditioned on a prior or subsequent haul by water as having any bearing at all upon the manner in which the grain tariffs here before us should be construed; no question of that at all. It is offered solely for the purpose of showing examples of where the carriers who are respondents in this proceeding follow the practice of providing rates which are directly conditioned on there either having been a prior or subsequent haul of the commodity by water, by an unregulated carrier with rates not on file with the Interstate Commerce Commission, the carriers

in some cases, as in connnection with lake-cargo rates being contract carriers. That is all it is offered for.

Exam. Taylor: Off the record:

(Discussion outside of the record.)

Exam. Taylor: Mr. Enoch, do you still insist that you should have the specific items upon which the witness is basing his reference to these lake-cargo and ex-barge river coal rates in the record physically?

Mr. Enoch: May I have an opportunity to talk with some of my colleagues about it?

Exam. Taylor: We will reserve a ruling until after lunch. Proceed.

By Mr. Belnap:

Q. What is your exhibit 77, Mr. Schimmel?

[fol. 2016] A. Exhibit 77 is a statement covering the inbound billing of the Continental Grain Company and the disposition made thereof as to grain received via barge in the period May 1, 1939, to November 30, 1939, and from the period December 1, 1939, to January 14, 1940. As to corn, this statement also shows for the same periods the tonnage received inbound via rail on even rate or I. P. inbound billing and via rail on lake local billing and the disposition made of such billing. If the proposed rule had been in effect, none of the ex-barge billing would have been canceled against a rail movement beyond.

By Mr. Cole:

Q. What do you mean by even rate?

A. In the grain trade we use the term even rate to cover points of origin in Illinois where the local and the Illinois proportional are the same.

Q. The lake local and the Illinois proportional rate is the same?

A. The regular local; the regular local rate and the specific rate are the same.

By Exam. Taylor:

Q. What is that, interstate or intrastate local?

A. Well, it wouldn't make any difference; when it is an even rate it would apply to an interstate destination.

Q. I mean the rate that you referred to, is that the lake local?

A. That is not a lake local, Mr. Examiner, it is the regu-
[fol. 2017] lar local.

Mr. Brown: What I was interested in, what necessitated the use to the rail billing inbound by lake; did you use so much of that——

Mr. Belnap: He said if the proposal had become effective he would not have used his barge against the rail movement.

Mr. Brown: And vice versa, you would have used your inbound rail against outbound rail; you would have had to switch, wouldn't you?

The Witness: Well, if I had to.

By Mr. Brown:

Q. You did have to, according to this?

A. Yes, some.

By Mr. Belnap:

Q. Mr. Schimmel, this even rate situation, is that term commonly applied in connection with rates to Eastern Trunk Line territory?

A. No; it is more or less just used as a trading term around by the traders and traffic men on the Exchange. Even rates to the trader or the traffic man, means that they do not have anything tied up in that billing; there is no tieup of difference.

By Mr. Brown:

Q. Difference that they might have to pay later to the railroad?

A. I do not get you on that.

Q. It is an even rate if the Illinois proportional is the same: when you ship east you do not owe the inbound rail-
[fol. 2018] road where there might be a difference between the Illinois proportional and the even rate?

A. Yes; that is correct.

Mr. Belnap: I would be very glad to have help straightening it out. I don't think that the term even rate is well explained on this record.

Exam. Taylor: Let us see if you can ask for a specific instance, from a specific point; what is the local rate from so-an-so to Chicago, the local rate and the Illinois proportional rate?

The Witness: I can give you an illustration of that; what is an even rate point? Lacon, Illinois is an even rate point.

By Mr. Belnap:

Q. What is the interstate local rate to Chicago from Lacon?

A. 12 cents.

Q. Now, as far as the interstate rates are concerned, that is the only rate that is published, is it not?

A. Yes, that is right.

Q. And it is published locally to Chicago?

A. That is correct.

Q. And do you call it even rate because that local rate to Chicago plus the proportional beyond to destinations east of western termini is the exact equivalent of the single factor through rate; is that it?

[fol. 2019] Mr. Cole: No;—Mr. Schimmel, is this what you mean: that from Lacon, Illinois the local rate, 12 cents, is the same as the Illinois proportional rate, 12 cents, so that when you get your grain into Chicago, if it moved in on the local billing or if it moved in on the Illinois proportional billing there won't be a premium or a discount on that rate to you grain men when you are handling that grain?

The Witness: There won't be any tieup for that bill.

By Mr. Cole:

Q. Isn't that what you mean?

A. Yes; you fellows talk a different language that I do on this thing.

Mr. Belnap: Don't say yes, then.

By Mr. Cole:

Q. Suppose Lacon had a local rate into Chicago of 9 cents, and an Illinois proportional rate of 12 cents; suppose that?

A. That wouldn't work out.

Q. That would not be even, because there was a penalty against the movement under the local rate; isn't that it? There would be a penalty there?

A. Well, I don't know of such a point as you mention; I don't know that is the same thing here.

Q. Give us an uneven point.

A. Take Lanarm, Illinois; 13 cents local, 12 cents Illinois proportional. Now, the division is the specific up to Chicago, 12 cents, and 26 cents to get to New York; that makes 38.

[fol. 2020] Q. Yes.

A. Now, you have paid 13 cents into Chicago, local.

Q. Yes.

A. Now, that local rate would also apply interstate, or apply on a through continuous movement; that is, wherever there are through rates named.

Q. Now, you have got a premium of 1 cent on that corn, haven't you?

A. Not necessarily.

Q. You call it a tieup?

A. It depends on how we buy it.

Q. You have got a tieup of one cent on that corn?

A. Not necessarily.

Q. At least, it is not even grain, is it; it is not grain that you would say was even rate——

A. No, it is not an even rate point; no.

Mr. Cole: All right; that is what we were trying to get to.

By Mr. Belnap:

Q. Let us take the inbound rate points; that origin was what?

A. Lanarm, Illinois.

Q. And the local interstate rate published to Chicago by the boat line serving Lanarm is what?

A. 13 cents.

Q. Isn't that rate, as far as the interstate application is [fol. 2021] concerned the only rate published by the originating line?

A. That is the only rate published.

Q. To Chicago?

A. To Chicago; well, we were talking about Chicago.

Q. The only interstate rate that is published to Chicago is this 13 cents?

A. Correct. There is only one rate published to Chicago.

Q. All right; in some of this territory we have lake locals; I am trying to get away from that. Now, from that point the through rate to New York is what?

A. 38 cents.

Q. So that your full combination on Chicago of 13 in and 26 out would make 39?

A. That is right.

Q. The shipper will pay 13 cents when he gets to Chicago, will he not?

A. That is correct.

Q. Then, on a reshipment out, somebody is entitled to one penny back on what is paid inbound, plus paying the proportional outbound?

A. Yes; or in that case you may bill out at a balance rate of 25 cents; one way or the other. There are two plans to bill out at the balance rate of 25 cents, or file claim for refund with the inbound carrier on the other application for 1 cent a hundred.

[fol. 2022] Q. You referred to this 12 cents as a specific; by that term, when you get through with New York, that is what it has actually cost to bring it to Chicago; is that the significance of that 12-cent figure?

Mr. Brown: No, what the railroad that brought it in finally gets.

The Witness: That is right.

By Mr. Belnap:

Q. That figure is not published in any tariff?

A. No, it is not published.

Q. Mr. Brown gives you a sheet that tells you what it is, for ready calculation; that is the same thing?

A. Yes; he has a very reliable tariff.

Mr. Brown: You might want to know why that is.

Mr. Belnap: Why was that, Mr. Brown?

Mr. Brown: Because the man who buys, he buys the grain from the receiver here, Mr. Brennan; Mr. Brennan has got to say that that fellow who shipped it from the country gets a price based on 12 cents, charged down in the country; and Mr. Schimmel may have a tieup of 1 cent invested in that bill.

Mr. Cole: I was wondering if Mr. Belnap would have Mr. Schimmel explain the situation of that grain while it is still in Chicago here, before it goes out. That is what Mr. Schimmel started to talk about, is what happened to that grain, and the circumstances in connection with that grain while still in Chicago, before it got out.

[fol. 2023] Mr. Belnap: Let us just continue with this one illustration: now, if this point happened to have a published tariff rate to Chicago which, plus 26 cents, was exactly even with this through rate, then you call it an even rate?

The Witness: That is right.

Q. Now, let us go back to your exhibit 67; can you say as to whether or not the Illinois origins shown on that exhibit are even rate points, or not?

A. All those are even rate points.

Q. So on through shipments by rail from those points to New York the through rate in the tariff is precisely equivalent of the local rate to Chicago, plus the proportional beyond?

Exam. Taylor: Which local rate?

By Mr. Belnap:

Q. The interstate local to Chicago, plus the proportional beyond.

A. Rail Illinois proportional rate, yes.

Q. You do not think it is the local rate to Chicago?

A. Yes, the local rate.

Q. Is it published as a local, Mr. Schimmel?

A. It is published as a local.

Mr. Belnap: Now, while we are on this exhibit 67, Mr. Cole, if you wanted to inquire something about what was done to certain billings while grain was on hand in Chicago, I would be glad to have you ask.

Mr. Cole: No, Mr. Schimmel was going into that; I was [fol. 2024] wondering if the Examiner—we got started off on something else.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. Exhibit 28 in this record, Mr. Schimmel, is a copy of John I. Hay freight bill registered with the Transit Bureau under No. 379106, and covers corn shipped to you from

La Salle; as to that particular exhibit, can you state what was done with the corn as to reshipment from Chicago?

A. Yes; all of that entire bill, the inbound weight being 2,509,040 pounds, was applied against outbound shipments from Chicago on October 31 and November 1, to Baltimore, Maryland, for export, and New York for export, and covered by transit shipping direction numbers 106096, 106099, 106098, 106102, 105949, and 105944.

Q. Those numbers you refer to are the directions which you give to whom?

A. They are those tendered to the Central Inspection and Weighing Bureau, and there rated; and the original receives this transit shipping direction number, and delivered to the outbound carrier for the issuance of rail bills of lading.

Q. Do you as a shipper put the outbound rate on those transit shipping directions?

A. No, sir.

Q. Who does that?

A. The Central Inspection and Weighing Bureau.

[fol. 2025] By Exam. Taylor:

Q. Are these the original transit shipping directions?

A. No; the originals, Mr. Examiner, are in the possession of the carriers. This is a copy made from my office record, which is identical with the original.

By Exam. Taylor:

Q. There is nothing at the foot of those originals to show that the shipper's certificate was completed?

A. Well, our name is signed down here.

Q. Are there any tariff references given?

A. Yes; they show 413 tariff, and the ICC number.

Mr. Belnap: Mr. Examiner, the papers you are looking at, I just asked him to get as far as the tonnage was concerned; and that was a convenient way he got them.

By Exam. Taylor:

Q. What was the purpose of showing reference to the transit tariff down at the foot of these directions?

A. The Inspection Bureau ordinarily require that. If we fail to show that transit tariff number they will call us

and instruct us in the future to put it on there, or they will send it back to us to put on.

Q. It is a requirement?

A. Yes, sir.

Exam. Taylor: Is that as far as you are going with this?

Mr. Belnap: I am going to put in a bill of lading.

Exam. Taylor: Inbound?

Mr. Belnap: Yes. Do you have with you a copy of the [fol. 2026] John I. Hay Company bill of lading covering the inbound shipment by barge indicated on exhibit 28?

The Witness: I do; that is a copy of the original.

By Mr. Belnap:

Q. And this copy was made out by whom?

A. The John I. Hay Company.

Q. Who actually did the typewriting on it?

A. John I. Hay Company.

Q. And tendered it to you for signature?

A. Yes.

Mr. Day: What is the date of it?

Mr. Belnap: This is a bill of lading October 25, 1939, from La Salle, Illinois, to Continental at Chicago. I ask to have that marked as exhibit——

Exam. Taylor: 79.

Mr. Belnap: Exhibit 79 for identification.

(Protestants' exhibit 79, Witness Schimmel, marked for identification.)

Mr. Belnap: And, Mr. Examiner, I have distributed to the parties simply a duplicate of the blank on which this John I. Hay bill of lading is found. May we go off the record, and let Mr. Schimmel just read in the typewriting, so they can copy it in.

Exam. Taylor: All right; off the record.

(Discussion outside of the record.)

By Mr. Belnap:

Q. Mr. Schimmel, tell us precisely how the billing was [fol. 2027] handled on this particular shipment, both as to the bill of lading and the expense bill, exhibit 28.

A. Why, this barge was loaded on October 25. We are in constant touch with our office in La Salle, Illinois, right

at the point where these barges are loaded. The elevator is on the river bank. And our representative there informs us of the loading weight and what the barge contains, the kind of grain. Then, we inform the John I. Hay Company that the barge has been loaded, and that we request that he issue a bill of lading stipulating that it be shipper's order; that is our own method of doing business on shipper's order ladings. And the bill of lading is made up, original and three copies; and our messenger usually, or a Western Union messenger is sent by the John I. Hay Company to the Continental Grain Company office, and we sign a copy for John I. Hay Company's file, and retain the original and two copies for our file.

Q. That is all done in Chicago?

A. All done in Chicago. Now, do you care for me to proceed on to the unloading of this barge?

Q. Surely.

A. The John I. Hay Company transports the barge into South Chicago, coming inbound through the Calumet Sag Canal, reaching the Rock Island Terminal elevator located on the river, and also the rails of the Rock Island, at 93rd and Harbor Street; and we arrange to unload the barge. [fol. 2028] We have the elevator equipped with a marine leg for unloading, a bucket system. The Chicago Trimmers Association are notified by a barge tender; I think he is located at 130th Street, so that they are usually on the job when we are ready to start unloading. And the Board of Trade Weighmaster supervises and obtains the unloading weight for the barge.

By Exam. Taylor:

Q. Commonly called in this record, out-turn weight?

A. The out-turn weight. The following day a certificate of weight is obtained from the Board of Trade Weighmaster; and our Board of Trade Weighmaster and we request John I. Hay Company to furnish us with a freight bill, original and three copies.

Q. Do you advise him of that out-turn weight?

A. Yes.

Q. That is the only way he gets it?

A. That is the only way he gets it. However, if he doubted the weight he could always check it up with the

Board of Trade Weighmaster. The freight bill is paid on the basis——

Q. Who makes the freight bill out?

A. John I. Hay Company makes the freight bill.

Q. At Chicago?

A. At Chicago. And I might mention that in some instances John I. Hay Company makes up the freight bill at the time that the bill of lading is issued; and he shows the billed weight on the freight bill. That is all he has at that [fol. 2029] time; he does not know what the barge will unload at.

Q. That is in bushels, isn't it?

A. That is right. And when he handles it in this manner we, in our office cut the freight bill down, or increase it, to the actual out-turn weight. And the freight is paid on the basis of 1½ cents per bushel.

Q. From La Salle to Chicago?

A. From La Salle to Chicago. The bill, together with our check, is sent over to Mr. John I. Hay, John I. Hay's Company's office to be receipted. Upon receipt of the original and copies, we then present to the John I. Hay—we then present to the joint agency the freight bill for registration. Then, it is returned to our files, available for shipment.

Q. With the inspection bureau's number put on the freight bill?

A. Yes.

Q. Does the bureau keep copies of that freight bill?

A. Yes, they take a copy of it,—the joint agency,—they call that the joint agency; I don't know why. But it is a part of the Central Inspection and Weighing Bureau.

By Mr. Belnap:

Q. Mr. Schimmel, is exhibit 24 a sample of a John I. Hay Company freight bill which was prepared based on the weight indicated at the time of loading, and then corrected to the out-turn bushelage when the barge is unloaded?

A. Yes.

[fol. 2030] Exam. Taylor: We will recess at this time until 2:00 o'clock.

(At 12:30 o'clock p. m., a recess was had until 2:00 o'clock p. m.)

Afternoon Session

2:00 o'clock p. m.

Exam. Taylor: All right, gentlemen; Mr. Belnap withdraws his witness temporarily. Do you have another witness?

Mr. Belnap: Yes; I want to call Mr. O'Connor.
Exam. Taylor: Mr. O'Connor.

D. J. O'Connor, was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Will you state your name, please.
A. D. J. O'Connor.
Q. By whom are you employed, Mr. O'Connor?
A. Central Inspection and Weighing Bureau.
Q. In what capacity?
A. Assistant Manager.
Q. And how long have you been with that bureau?
A. Twenty-eight years.
Q. Insofar as the transportation of grain into or out of Chicago is concerned, what is done by that bureau?
A. We supervise the transit privileges on that grain, and authorize rates on outbound movements.
[fol. 2031] Q. In so doing, do you act as the agent for the line-haul carriers?
A. That is right.
Q. Are you familiar with the various tariff notes contained in the tariffs of the eastern lines which provide the traffic on which shall be applied the various proportional and reshipping rates published in such tariffs?
A. Yes.
Q. There is evidence in this record, Mr. O'Connor, Mr. Tannehill's exhibit 1, a history of those notes: was there a meeting held at the office of the inspection bureau in the early part of 1935 in which the matter under consideration was as to whether or not the proportional and reshipping rates from Chicago to the east could properly be applied on ex-barge grain?
A. Yes, there was such a meeting.

Q. Was there a minute made in your office as to who attended that meeting and the results of the consideration of the subject?

A. Yes.

Q. Have you that minute with you?

A. Yes.

Q. Would you please refer to it, and tell us who was there.

A. Mr. Bernstein, Assistant Manager of the inspection bureau; Mr. Nash, representing the Pennsylvania.

[fol. 2032] Q. Who was Mr. Nash?

A. He was then General Freight Agent of the Pennsylvania Railroad. Mr. Lantz, of the Erie.

Q. Who was Mr. Lantz?

A. I think he was freight traffic manager at the time. Mr. Patterson, representing the New York Central. He was represented by Mr. Dale; and Mr. Hart, representing the Baltimore & Ohio, represented by Mr. Slater.

Q. And what minute was made of the result of your consideration of the matter?

Mr. Cole: I would like to object to the question asked now as to what minute was made, unless it be further indicated now just the purpose for which they desire that minute. Now, there may be some legitimate reason for that thing in here; I don't know yet. But if that thing is now being introduced for its effect upon a clear interpretation of an unambiguous tariff interpretation, it has no bearing. It is completely irrelevant, and simply confusing the issues. If it is to explain some ambiguity, I think then before it is subject to evidence it must first have —we must first have pointed out to us that ambiguity which they are trying to explain.

Mr. Belnap: I do not possibly see how any representative of an eastern line, could even suggest, by innuendo or otherwise, that there is any ambiguity in the present tariff, since for five long years the rates have been applied to [fol. 2033] the ex-barge traffic. It does not seem to be possible that there could be suggested any ambiguity. However, again only in the most general terms it has been suggested on this record there is some qustion as to whether the rates have been properly employed. I bring to the stand a witness whom Mr. Cole obtained for me, whom I called as the representative of the inspection bureau as to what have been their views and the views of

certain railroad people participating in the conference about which he spoke. That would seem to me to be the obvious thing to do if there is any slightest question as to ambiguity,—show what they have done.

Mr. Cole: Of course, the inspection man is here. It is a question of fact as to what has been done. As to that, I do not think any legitimate exception to a question could be taken, as to what has been done. But to have introduced a minute which would furnish an interpretation of this rule, all of which has been made a part of the record, when Mr. Belnap must state that it is not subject to any ambiguity, I submit that that is not proper evidence of the tariff provision that right here is in the record already.

Mr. Enoch: If the Examiner please, I think we ought to be permitted to see what this minute is.

Exam. Taylor: Certainly; show counsel the minute, please. Do you gentlemen still make the same objection?

Mr. Enoch: I would like to object to it on this ground, [fol. 2034] particularly among others; that I do not understand there is any dispute on this record as to what has been done; and I do not understand that this note, dated as it is, will throw any light on what has been done, or counteract any testimony already spread of record here as to what has been done. And the only purpose that I can see that it would serve here would be to show how somebody else construed the tariff. And I say that is something that is not the proper subject matter of evidence by this witness. If he states anything he should state facts; and then the Commission would draw its own conclusion as to the proper interpretation of the tariff.

Exam. Taylor: In the last analysis the Commission is the place to determine the application of these tariff rules and rates; and whatever these few officials got together and decided as to the interpretation is not the last analysis. It will be received subject to the objection.

Mr. Cole: In other words, I interpret your question to mean that under the circumstances it will be received for what it is worth, subject to that objection?

Exam. Taylor: Absolutely.

By Mr. Belnap:

Q. When was this conference had?

A. January 18th, 1935.

Q. And you have told us who was present; now, will you please read into the record the minute made at the conclusion of that conference?

[fol. 2035] A. "After carefully reviewing Note 20 of Agent Jones' tariff 245 series, it was unanimously decided that this provision was clear in requiring the application of the reshipping or proportional rate from Chicago to Trunk Line and New England territories as covered thereby, on grain reaching Chicago via water transportation line, which would include river grain reaching Chicago via barge lines. On traffic to Central Freight Association and western termini points, the provision of individual roads' tariffs vary somewhat in their language. But the conclusion finally reached was that a reasonable interpretation in line with the many decisions of the Interstate Commerce Commission would admit of applying the reshipping Northwest rates, the same as is being applied at the present time, and has been applied in the past to all water-borne grain reaching Chicago, principally via lake.

"The New York Central Railroad tariff has not been modified to conform to the provisions generally provided for in other Central Freight Association roads' tariffs; and that road has concluded to carefully consider this provision of their tariff to determine whether it would admit of applying the reshipping rate on river grain.

"It was the consensus of the representatives present that the occasion has brought to light the necessity of clarifying tariffs of the Central Freight Association roads in regard to rates which should apply from Chicago on ex-lake as [fol. 2036] well as ex-river grain."

Q. Mr. O'Connor, in the minutes which you just read you dealt first with Note 20?

A. That is right.

Q. That is, as I understand, what covers Eastern Trunk Line and New England?

A. Note 20 in ICC 245 series.

Exam. Taylor: What is the ICC number?

Mr. Belnap: The present ICC number is 3356, the series getting down to G.

By Mr. Belnap:

Q. Then when you spoke as to traffic in Central Freight Association and Western termini points, those rates and

the provisions relating thereto are carried in a different tariff, are they not?

A. At the present time they are carried in 535 series. At the time this record was made those rates were published in the individual roads' tariffs.

Q. And the 535 series, the present ICC number is 3300?

A. Yes, sir.

Q. After this minute was made, did the inspection bureau and carriers give further consideration to this matter of revising the notes providing for application of certain proportional rates to ex-lake and ex-barge grain?

A. Yes, they did.

Q. Did you endeavor to carry out what you said you [fol. 2037] would do; that is, to clarify the note?

A. Our organization is not legislative; it is administrative. And any change in the tariffs would have to be accomplished by the carriers.

Q. That was done by the carriers?

A. Yes, sir.

Q. They did consider, however, that matter of clarification?

A. I believe so.

Q. That is a matter with which you are in contact from time to time?

A. We keep in touch with them, yes.

Q. And you know that to be a fact, from your contact with railroad representatives?

A. Yes, sir.

Q. From whom you act as agent?

A. That is right.

Mr. Enoch: What is the fact, that they considered clarifying them, or that——

Mr. Belnap: I just got as far as they considered them. Then, Mr. O'Connor, did the carriers publish the present Note 40 with the intent of clarifying that question?

The Witness: I would not be qualified to answer.

By Mr. Belnap:

Q. You don't know whether that was the intent or not?

A. No, we are not legislative.

[fol. 2038] Q. I understand that, sir.

A. I am not informed as to the purpose, no.

Q. Regardless of the purpose, was there made effective in June of 1935 an agency tariff carrying a revision of the notes to which I have directed your attention, which is published for the account of all lines east of Chicago.

Mr. Cole: I object to that question, Mr. Examiner. There has been introduced here——

Mr. Belnap: Yes, I know; it speaks for itself. I am sorry I wasted the time to ask the question. Insofar as ex-lake grain, Mr. O'Connor, has it in the past come in here not only from Duluth and that territory which is truly northwest in a geographical sense, but has also come in here from Georgian Bay ports, from Lake Erie ports, as well as direct all-water importations from foreign countries.

The Witness: Yes, there may have been such a movement, yes.

By Mr. Belnap:

Q. You know that to be a fact, do you not?

A. Yes, I know there was some import from foreign countries.

Q. And on that grain has the inspection bureau ruled that so far as Central Freight Association territory western termini points, are concerned the applicable rates are what are termed here the Northwest proportionals?

A. Yes.

Mr. Enoch: I move that answer be stricken out; and I [fol. 2039] object to the question, because the ruling of the Central Weighing and Inspection Bureau is not the point; if he wants to say what was done——

Mr. Belnap: I will correct it, Mr. Enoch: when you said ruling, did you understand me to ask you in a sense that you so applied the rates when it came to the administration of the bureau?

The Witness: What is your question again, please.

By Mr. Belnap:

Q. I am inquiring about the grain which was imported, all-water, to Chicago, the grain which came from the Lake Erie and Georgian Bay ports, as to whether when it came to carrying out your obligation to the carriers of applying the rates on outbound billing, whether or not you did not put in the Northwest proportionals?

A I could not tell you definitely where that import grain from our territory moved. I know some moved to Peoria and Pekin; but whether any went east by rail, I could not say definitely at this time, without referring to our records.

Q. Would it be your opinion that the Northwest proportional would be applicable if the import grain moved into Central Freight Association territory?

Mr. Enoch: I object; he said opinion.

Mr. Belnap: I am taken considerably by surprise by this whole situation. I discussed this matter off the record with people who were going to provide a witness who would [fol. 2040] deal with these subjects. I am confronted with the fact that after five years—that for five years these carriers have applied rates——

Exam. Taylor: There is no question about that.

Mr. Belnap: We come to a suspension proceeding, when the main question ought to be as to whether what is proposed is a lawful change; and I am confronted with general statements that there is no change proposed; these have never applied. Nobody attempts to put a witness on the stand, I am told that this is the lawyer's opinion. Nobody points out any particular phraseology on which they reply in support of that matter. I go to the carrier's own agent, try to find out what as representative of the carriers, has been their opinion, what they tried to do when they published these various rates; and I am met with repeated efforts to stop me and the Commission.

Mr. Day: Mr. Belnap: we are standing four square on the tariff itself; and if you think your position is right, you can stand on the tariff.

Mr. Belnap: I don't know what your position is, and you have never explained it.

Exam. Taylor: Mr. Belnap, this witness, Mr. O'Connor, has stated once or twice, maybe three times, that the bill acts in an administrative capacity; and he carries out the rules as a committee tells him to carry them out.

Mr. Belnap: I don't understand he said anything about [fol. 2041] a committee, Mr. Examiner.

Exam. Taylor: His own testimony that he read into the record was a committee action. You had him read that in the record.

Mr. Belnap: You are relying on this minute as being an instruction for him to follow?

Exam. Taylor: Yes.

Mr. Belnap: I understand that was in the tariff prior to the time Rule 40 was changed, so I have been informed; it is offered with the intention of clarifying——

Exam. Taylor: You can ask this witness any question as to how they acted, what rates they applied on specific shipments, that he can recall; and we will permit him to answer, because he is in an administrative capacity.

Mr. Belnap: The witness has now said he does not recall whether there was any occasion for apply rates. I think it leaves the record in a horrible, sorry state.

Mr. Enoch: I disagree with that, and I think it is wholly unimportant what purpose the eastern lines had in mind when they published Rule 40, or any other. The main question is what did they accomplish when they did; and neither Mr. O'Connor nor any other witness is going to be able to assist the Commission in that, other than point out the tariff provisions.

Exam. Taylor: Point them out and say how they apply. [fol. 2042] Mr. Cole: The thing I objected to what is his opinion.

Exam. Taylor: I will sustain an objection as to opinion.

Mr. Belnap: I respectfully take an exception thereto, and will desist; because that is what I wanted to inquire into from this gentleman on the record.

Exam. Taylor: Exception noted on the record. Is there anything further from this witness?

Mr. Belnap: I have not.

Cross-examination.

By Mr. Day:

Q. Have you with you a copy of PGM 166 of the January 3rd and 4th, 1934, meeting?

A. Yes.

Q. This was the meeting to consider the——

A. That concurred in this.

Q. Yes, but I mean your PGM 166 of the January 3rd to 5th, 1934, meeting?

A. No, I haven't got that.

Q. The provisions of that are incorporated in the document you have shown me here?

A. Yes; this is incorporated over here.

Q. Will you just read what that provision was?

Mr. Belnap: Are you going to show it to me, Mr. Day?

Mr. Day: Yes; this is the action taken at the meeting January 3rd to 5th, 1934.

Mr. Belnap: I think I would like to know about the pur-
[fol. 2043] pose first.

Mr. Day: The purpose is to show, Mr. Belnap, that previously the Central Freight Association had passed a recommendation or resolution that the reshipping and/or proportional rates be not applied in connection with any traffic reaching Chicago, Illinois, via barge.

Mr. Belnap: Mr. Examiner, I think I am entitled to a fair statement of the purpose, when I ask a witness about it.

Mr. Day: I told you.

Mr. Belnap: Of course, he wanted to put in what is in the memorandum; I knew that when he asked him, sir. I think I am entitled to a fair statement of the purpose, not a fact. The document Mr. Day showed me is a circular signed by Eugene Morris as the Chairman of a rate-making body for some of these lines, which is the administrative body,—rather, legislative action. You refused me because Mr. O'Connor is not qualified to go into legislative matter. Counsel for the railroad is going into legislative matters by the same witness.

Mr. Day: No, Mr. Belnap; you have put in here a minute of a meeting of railroads January 18th, 1935, with reference to alleged application of reshipping rates of Eastern lines to barge traffic.

Exam. Taylor: That is not administrative there; that was as to the application of the rules in question.

Mr. Day: The evidence that I desire to have presented [fol. 2044] now is the same kind of resolution adopted at an earlier meeting of the Central Freight Association rails, and showing a contrary action by that body.

Mr. Belnap: That is a joint committee of the Central Freight Association?

Mr. Day: Central Freight Association joint committee, yes, sir.

Mr. Belnap: This is a legislative proposition, on which I understand this witness is not qualified to speak; so I object.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Oh, I think you can put that in. It will be received for such value as it may have.

The Witness: "Further consideration was given to the application of reshipping rates on grain, grain products, and grain by-products from Chicago, Peoria, Pekin, East St. Louis, Illinois, St. Louis, Missouri, and/or Illinois River landings to grain, grain products, and grain by-products reaching those points by barge. Recommended that the recommendation adopted by Central Freight Association general committee meeting November 7th to 10th, 1933, under Docket 241, PGM No. 164; viz, recommended that the reshipping and/or proportional rates be not applied in connection with any traffic reaching Chicago, Peoria, Pekin, St. Louis, East St. Louis and/or river landings via barge [fol. 2045] be rescinded. Further recommended that the reshipping and/or proportional rates be not applied in connection with any traffic reaching Chicago, Illinois, via barge."

By Mr. Day:

Q. Now, Mr. O'Connor, since this conference held in Mr. Bernstein's office on January 18th, 1935, as to which you testified, was held, did you receive any further instructions from railroads in this matter?

A. Not until the other recommendation came out.

By Exam. Taylor:

Q. Not until the one that was read previously?

By Mr. Day:

Q. I am talking about this one that you quoted from the record: now, you have not had anything since then, have you?

A. No; this is subsequent to that. It confirms that.

Exam. Taylor: Mr. O'Connor, that does not mean anything in the record; put the dates in it, and you will have something.

Mr. Belnap: Mr. O'Connor, when you read for Mr. Day, you read a quotation, did you not, from the minutes of the meeting of traffic officials of Eastern lines of January 23, 1935?

The Witness: That is right.

By Mr. Belnap:

Q. And in that minutes you quoted an early resolution, which is the portion Mr. Day had you read for the record; is that correct?

A. That is correct.

[fol. 2046] Q. And in this meeting of January 23, 1935, after they quote that provision Mr. Day had you read, don't they go on and say in substance that they are simply confirming the minute I had you read?

A. That is right.

By Mr. Day:

Q. And the minute that Mr. Belnap had you read was the last you had from the railroad?

A. No, this that I had.

Mr. Belnap: The January 23, 1935, was the last?

By Mr. Day:

Q. And that was just a minute confirming that?

A. Yes.

Mr. Belnap: That meeting of January 23, was a much larger meeting?

A. Yes.

Q. Almost all of the lines were represented at that meeting,—eastern lines?

A. Yes, eastern lines.

By Mr. Day:

Q. The minute or the resolution which I had you read was also a general committee resolution, was it not? I am talking about the PGM 166.

A. That was also a general committee meeting.

Q. General committee meeting?

A. That is right.

Mr. Day: That is all.

Exam. Taylor: The witness is excused.

[fol. 2047] (Witness excused.)

Exam. Taylor: Mr. Benson, before we go on with the next witness, have you something?

S. H. Benson, recalled, previously sworn and further testified as follows:

Cross-examination (Resumed).

The Witness: Mr. Macaulay asked me yesterday to confirm the figures showing the receipts of grain at Chicago for 1938 on page 7 of my exhibit 19. That page shows that the receipts of grain at Chicago via lake all came from Duluth; and I am now in position to say that that statement is correct. All that grain which arrived at Chicago in 1938 via lake came from Duluth, as shown in the Annual Board of Trade report of 1938. Mr. Macaulay asked me also as to the receipts at Chicago in 1939. The Board of Trade records show merely by lake, without showing the origin lake port. I have developed that the wheat, 211,000 bushels, and the rye, 986,000 bushels, came from Duluth; and that the barley amounting to 344,000 bushels came from Ft. William, Ontario. The explanation for not showing the origin port in the 1939 receipts is that the compiler did not think it was necessary; that under ordinary circumstances, what grain Chicago receives by lake comes from the head of the lakes, and that it was only during the period that Chicago received grain from other ports that he did show the head of the lakes ports.

[fol. 2048] By Mr. Macaulay:

Q. Will you state what you mean by the head of the lakes?

A. Well, the term ordinarily implies Duluth, Superior, Ft. William, Ontario, and Port Arthur, Ontario.

Mr. Macaulay: That is what I wanted to clear up.

Exam. Taylor: Anything from this witness?

Mr. Day: Yes.

Re-direct examination.

By Mr. Day:

Q. All of these origins that you mentioned, Mr. Benson, are in what is described as Northwest territory in the tariffs?

A. As far as lake receipts at Chicago are concerned.

Q. That is what I meant.

A. The Central Freight Association tariff arbitrarily gives such business the Northwest rates.

Q. It always defines the Northwest territory as all points in Wisconsin, all points in Minnesota, all points in the Dominion of Canada, all points in northern Michigan, all points in North and South Dakota, and so forth?

A. That is true;——

Q. All of these movements that you referred to in your testimony just now did originate in that Northwest territory?

A. That would be true as to all-rail receipts.

Q. No, I mean as to these lake receipts to which you have just testified?

[fol. 2049] A. Well, I would put it this way: that if any shipments arrive via rail originating at those ports, they are in Northwest territory; but as to lake shipments, anything we receive by lake is arbitrarily in Northwest territory.

Q. You misunderstand me; you gave the origin of various lake shipments arriving at Chicago?

A. Yes, sir.

Q. Those origins are all in what is described as Northwest territory in the tariff?

A. Well, I must repeat, only as to all-rail shipments. The point is this: if we got a lake shipment from Montreal, it would still take the Northwest rate.

Mr. Belnap: Would that also be true as to Toledo, Ohio?

The Witness: Any port.

By Mr. Day:

Q. Northwest territory as described in Rule 40 is points in Wisconsin, points in the upper peninsula of Michigan, points west of the Minnesota-Wisconsin state line, except trans-Mississippi River territory as described in note 20, pages 77 to 78, points in the Dominion of Canada; namely, all points in the Provinces of Alberta, British Columbia, Manitoba, and Saskatchewan. Now, all of those origins as to which you testified shipments of grain came into Chicago by lake originated in that Northwest territory, did they not?

A. Not by lake; no, sir.

Mr. Day: All right.

[fol. 2050] By Mr. Cole:

Q. The point of origin, say that it is Duluth, and a shipment is made from Duluth by rail and a shipment is made from Duluth via lake; is Duluth in a different place in each instance?

A. The application——

Q. I don't care anything about that, Mr. Benson; is Duluth in a different place in each instance?

A. Well, I am not going to answer the way you want me to.

Q. No, I don't mean to——

A. The application via lake is entirely different from that via rail.

Mr. Cole: I understand that;——

Mr. Brown: That is not what he wanted to get, Mr. Benson; he wants to know if Duluth, Superior, and Port Arthur and Fort William are not in what is known as the Northwest territory in the rail tariff. They are so described in the rail tariff, aren't they, irrespective of whether they move anything or not; aren't they located in the Northwest territory, as described in the tariff?

The Witness: I would say yes, as to shipments arriving via rail.

By Mr. Brown:

Q. Now, Chicago is in Illinois, whether it ships anything or not, isn't it? That is what we want to get at; isn't Chicago in Illinois, whether you ship anything——

A. I know what they are getting after; I know exactly. [fol. 2051] Mr. Belnap: Mr. Examiner, if it is purely a matter of geographical location, the Commission takes judicial notice.

The Witness: I want to say this as to lake receipts: it does not make any difference as to what port those shipments come.

Mr. Belnap: Why is that?

Mr. Enoch: No, where is it?

Mr. Brown: We are going into something that was not raised. Mr. Macaulay, did he answer your questions satisfactorily?

Mr. Macaulay: Yes.

Mr. Brown: All right; now the witness is through.

Mr. Belnap: I still have a question pending. He is distinguishing between lake and rail, and the question did not indicate that at all.

Exam. Taylor: Mr. Belnap has a question on the records.

Mr. Belnap: Why the tariff, Mr. Benson, comes to the conclusion that any lake movement is as if it were from the northwest.

Mr. Brown: Object.

Mr. Enoch: Object.

Mr. Belnap: From the tariff I want him to tell us why.

Exam. Taylor: The witness may state if he knows, subject to rebuttal.

The Witness: What is the question?

[fol. 2052] By Mr. Belnap:

Q. Why, Mr. Benson, you treat any lake shipment as a northwest shipment; that is what I understood you to say, from the tariff that every one is considered northwest, whether from Montreal, Toledo, or Buffalo, or Duluth, or where it was from.

A. Including Illinois?

Q. Including Illinois; now, why is that, Mr. Benson, from the tariff?

A. The way I interpret this tariff,——

Mr. Enoch: Object to that.

The Witness: That is all I can give you, is my interpretation.

Mr. Belnap: What is objectionable about having a man that is experienced with tariffs giving his interpretation?

Exam. Taylor: You can go to your particular provision and tell how you get it, not your opinion; we are talking about a specific tariff rule now, tariff application.

The Witness: Well, the application starts out with "Rates on grain subject to this note,—" that is Note 40.

Mr. Enoch: What tariff provision is that?

The Witness: It is a part of Note 40.

Mr. Enoch: Well, is it the present Note 40; is that what you are referring to?

The Witness: Yes, sir; the present Note 40, in Central Freight Association 535-A, ICC 3300. This particular part [fol. 2053] of Note 40 starts out with "Rates on grain subject to this note will apply on grain originating in the fol-

lowing described territory: (a) points in Wisconsin; (b) points in the upper peninsula of Michigan; (c) points west of the Minnesota state line, except points in trans-Mississippi River territory as described in Note 20, pages 76 and 77; (d) points in the Dominion of Canada; viz. all points in the Provinces of Alberta, British Columbia, Manitoba, and Saskatchewan; (e) on shipments which arrive by boat lines at Chicago, Illinois, Kewaunee, Wisconsin, Mackinaw City, Michigan, Manitowoc, Wisconsin, Menominee, Michigan, Manistique, Michigan, and Milwaukee, Wisconsin." I would say that under that application any shipment which arrives at Chicago by boat is subject to the northwest grain rate, whether it comes from Duluth, Illinois, or Montreal.

By Mr. Belnap:

Q. Has the traffic department of the Chicago Board of Trade so advised the members of the Board?

Mr. Enoch: Object to that.

The Witness: Yes, sir.

Mr. Enoch: Just a moment; I object to that.

Exam. Taylor: On what grounds.

Mr. Enoch: It will not help the Commission to have Mr. Benson interpret. That is a conclusion to which the Commission is going to come, after it reads this tariff.

Exam. Taylor: Objection sustained. Is there anything [fol. 2054] in rebuttal to that?

Mr. Macaulay: One question on recross.

Recross-examination.

By Mr. Macaulay:

Q. Mr. Day asked if it applied under Note 40; I would like to ask if it applies under Note 20 in ICC 245-F.

Mr. Brown: Well, now, Mr. Examiner, I don't think Mr. Benson cares what he may have told anybody, and I do not.

Mr. Macaulay: I am not asking that.

Mr. Brown: I know it; but you are asking him to interpret a tariff which he did not introduce. Mr. Benson went back to explain the only thing he introduced here, his statistical exhibits. Now he has gone just as far as his origi-

nal examination went, and a great deal further; and I am going to object to any more.

Mr. Macaulay: Unless Mr. Day withdraws his question,—I think I should be allowed to ask whether these rates apply under Note 20.

Mr. Day: Mr. Macaulay, he didn't answer the question, and I didn't stress the question. All I asked him was whether these points of origin as to which he testified shipments moved from were not points of origin in the Northwest territory.

Exam. Taylor: You are going outside of the direct examination? It appears that you are, and I must sustain Mr. Brown's objection.

[fol. 2055] Mr. Macaulay: Just because Mr. Day did not get an answer to a question he asked,——

Exam. Taylor: The ruling is already made, Mr. Macaulay.

Mr. Enoch: Mr. Benson, did you read that part of Note 40, the heading of which is in large letters, bold face, "Grain (Northwest)?"

Exam. Taylor: Do you object to this, Mr. Brown? This seems to be outside of his direct.

Mr. Enoch: This is what he did read.

Mr. Brown: What part of it didn't he read that is material?

Mr. Enoch: I want to know what he did read.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Is that all from Mr. Benson? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Resume with Mr. Schimmel.

J. J. Schimmel resumed:

Direct examination (Continued).

Exam. Taylor: Off the record.

(Discussion outside of the record.)

By Mr. Belnap:

Q. Mr. Schimmel, I think you had concluded describing the billing, both bill of lading and expense bill incident

[fol. 2056] to the handling of shipments for you by John I. Hay Company; now, have you also had shipments handled for you by the A. L. Mechling Barge Line?

A. Yes, sir.

Q. Now, will you go through the same detail, as to how you secure a barge, who makes out the bill of lading, and when it is signed if there is any difference as to the handling of shipments at destination, and when there is any difference in the way expense bills are made out and handled.

Exam. Taylor: Who is the shipper?

Mr. Belnap: Continental Grain Company. From what origins have you had Mechling handle shipments for you?

The Witness: Well, from LaSalle, Illinois, Peoria, Illinois, and Lacon, Illinois.

By Exam. Taylor:

Q. None from Morris?

A. No. Mechling has towed grain that we have purchased down there, but he has towed it for the seller.

By Mr. Belnap:

Q. As I understand, on the Morris shipments you have your dealings for paying somebody transportation charges for the account of the shipper with the Allied Barge Corporation; is that correct?

A. That is correct.

Q. Even when Mechling tows the barges?

A. That is correct also.

Q. But what you are going to now talk about is where [fol. 2057] Mechling handled grain for the Continental Grain Company in Mechling's own equipment; is that correct?

A. That is correct.

Q. How do you get the barge, and all that sort of thing?

A. Let us take LaSalle as typical: the same thing would be correct at Peoria or Lacon. We advise the A. L. Mechling Barge Line that we are in a position to ship a barge load of grain, and he usually at that time advises us when we may expect delivery of an empty, a barge at our elevator siding in LaSalle.

By Exam. Taylor:

Q. Did you say elevator siding?

A. Elevator dock; the same as in the instance of Hay, we are in constant contact with our LaSalle office, who inform us of the loading weight of the barge and the kind of grain loaded therein. We immediately inform the A. L. Mechling Barge Line of Joliet the barge has finished loading, it is ready to be towed into Chicago; and request that bill of lading be issued and mailed to us, together with a freight bill showing the billed weight. The barge arrives at our elevator at South Chicago, and we unload the barge and obtain out-turn weights from the Board of Trade Weighmaster. Immediately after noting the out-turn weight we correct the freight bill to the out-turn basis of weight and make payment by check, and send the freight bills along to the A. L. Mechling Barge Line for receipted copies. These receipted copies are returned to us, and are sent to the joint agency for recording. I might mention, a copy of [fol. 2058] the freight bill is retained by the joint agency, and the original returned to us for transit purposes.

By Mr. Belnap:

Q. Is the bill of lading you get from Mechling on the form that has already been made a matter of record here, exhibit No. 49?

A. I don't know that I saw that form, the Mechling form; —yes, it is the same as exhibit 49.

Q. Mr. Schimmel, since the preparation of exhibit 77, has the Continental Grain Company sold a substantial quantity of river grain for rail movement to Baltimore for export?

A. It has.

Q. Is that the process being loaded now?

A. Yes, sir.

Q. How many cars are involved?

A. Approximately 300 cars.

Exam. Taylor: Mr. Belnap, pardon the interruptions: have you concluded the statement as to the handling of the traffic into Chicago?

Mr. Belnap: Just one other item: I will just finish this one point, and I will go back. You say approximately 300 cars?

The Witness: That is correct.

By Mr. Belnap:

Q. That tonnage is being shipped on the proportional rate from Chicago to Baltimore?

A. Yes, sir.

[fol. 2059] Q. And you are surrendering port billing in order to get that rate?

A. A 16-cent rate, yes.

Q. What is that, corn?

A. Corn.

Q. When it comes to the grain which is brought to your elevator having been purchased by you from the Allied Grain Dealers, what do you have by way of—do you use any bill of lading on that shipment?

A. Yes; the Cooperative Allied Grain Dealers forward the original bill of lading to us; and that document is necessary to be registered under the United States Warehouse Act, to send to the custodian as evidence that the grain is ours. And that is stamped on the original bill of lading, and returned to us. That is after the barge is unloaded.

Q. That is a Mechling Barge Line bill of lading, is it?

A. Yes, that is right.

Q. On the form that has already been introduced in this record as exhibit 49?

A. That is right.

Q. But you have nothing to do in securing the issuance of that bill of lading, have you?

A. Nothing whatever.

Q. When the grain arrives at Chicago, about which we are talking handled in the barges of the Allied Barge Cor-[fol. 2060] poration, what do you have to do with it, as far as paying freight charges?

A. Lowell-Hoit & Company call us to obtain the unloading weight, and they verify that weight with the Board of Trade Weighmaster; and usually the following day after unloading, present us with a freight bill. And we issue a check.

Q. Payable to whom?

A. Payable to the Allied Barge Corporation; and send it up to Lowell-Hoit & Company who act as agents, as I understand it, for the Allied Barge Company; and they receipt the freight bill.

Q. In their own name, or in the name of Allied Barge Corporation?

A. In the name of Allied Barge Corporation.

Q. And send you back the receipted bill?

A. And copies.

Q. And you handle it as you did these other bills?

A. In the same manner from there on.

Mr. Belnap: Does that cover it sufficiently, Mr. Examiner?

Exam. Taylor: I would like to know whether in the transaction in connection with the Cooperative Allied Grain Dealers you buy that directly from that corporation, or whether you buy it through some intermediary?

The Witness: Well, some is bought direct from the Co-operative Allied Grain Dealers, and in other instances we have purchased from Lowell-Hoit & Company.

[fol. 2061] By Mr. Belnap:

Q. Who acts as a receiver?

A. They are a receiver on the Board.

By Exam. Taylor:

Q. They act as the agent of the Allied Grain Dealers?

A. I could not say as to that; they act as agent in regard to the handling of the freight on these purchases. Now, as an agent otherwise, I could not say.

By Exam. Taylor:

Q. You just got through saying that sometimes you bought through Lowell-Hoit & Company.

A. We buy direct from Lowell-Hoit; they offer us grain, and we buy it.

Q. And then when they make delivery it is Allied Grain Corporation grain?

A. Beg pardon?

Q. You buy it from Lowell-Hoit, and when they make delivery it is Allied Grain Corporation grain?

A. Yes, presumably they buy it from the Co-operative Allied and then sell it to us.

By Mr. Belnap:

Q. But the Examiner asked you, Mr. Schimmel, at the time it is delivered to you is it Allied Grain Corporation's grain?

A. No.

By Exam. Taylor:

Q. Whose grain is it?
A. It is Lowell-Hoit & Company's; we buy it from them.

By Mr. Brown:

Q. While it is afloat?
[fol. 2062] A. I couldn't say; I think perhaps it is done both ways. Sometimes while it is afloat; some of it is booked on 10 or 15 days; 30 days, and so forth.

Mr. Enoch: May I ask a question right there?
Mr. Belnap: Yes.

By Mr. Enoch:

Q. I understand now that in some instances you buy direct from the Allied Grain Corporation through Lowell-Hoit & Company in Chicago?
A. Oh, no.
Q. In some instances?
A. No.
Q. In other instances you buy direct from Lowell-Hoit & Company grain which Lowell-Hoit & Company has bought from Allied?
A. That is right.

By Mr. Belnap:

Q. The latter is always the case when you deal with Lowell-Hoit & Company in the purchase of grain?
A. Yes; they evidently get the grain from the Co-operative and Allied; it comes from Morris, and that is what I would naturally expect.

Exam. Taylor: The reason I asked was because you first, as I remember, said that you bought from the Co-operative Allied Grain Corporation.
The Witness: There is two distinct transactions here, Mr. Examiner: on the one hand we purchase direct from Co-operative Allied Grain Dealers.

[fol. 2063] By Exam. Taylor:

Q. Yes.
A. Then, in another instance we purchase from Lowell-Hoit & Company.

Q. Yes; the way you answered Mr. Enoch, it seemed that you were reversing the proposition again. Will you read Mr. Enoch's question, Mr. Reporter.

(Questions and answers read.)

By Mr. Belnap:

Q. Mr. Schimmel, exhibit 29 is a copy of an A. L. Mechling Barge Line bill covering grain shipped to Continental Grain Company at South Chicago via barge from—registered with the transit bureau under No. 391585, shipment being November 18th, 1939. Will you tell us how that billing was disposed of.

A. The entire freight bill was applied for cancellation against steamer James H. Reed, loaded from South Chicago on November 26th. And the usual lake cancellation form for surrender of inbound billing was used to cover that cancellation.

Q. Now, the inbound freight bill covered 1,566,610 pounds; what was the total amount of the outbound pounds on *y*hat steamer?

A. 15,540,000 pounds.

Q. Against that outbound shipment, did you likewise cancel a very considerable amount of rail expense bills?

A. Yes, I did.

Q. All the expense bills, you say, surrendered are ar-[fol. 2064] ranged, are they not, on a form addressed to the Central Inspection and Weighing Bureau?

A. They are.

Q. Giving the information as to the outbound shipments, and giving reference to the bill's number on the bills to be canceled?

A. That is correct.

Q. Now, in so submitting that document to the Central Weighing and Inspection Bureau, do you also execute a transit house certificate, that you would execute in case you were making a rail shipment beyond Chicago?

A. Yes.

Q. And will you state what are the terms of the certificate that you execute when you tender either ex-barge, ex-lake, or ex-rail billing for cancellation because of an outbound shipment by lake?

A. The above-described freight bills are hereby tendered in accordance with requirements of freight tariff No. 288,

ICC 1014. That looks like an old one to me; ICC 1014 issued by W. J. Kelly, Agent, and we hereby certify that said freight bills are legally represented by the freight bills as above stated. This is a statement of transit house certificate on the bottom of the lake cancellation form.

Q. And are you now using an old form which has a previous tariff number on it?

[fol. 2065] A. Yes; maybe that is the only form they supply. There is some other tariff reference shown on that, that is more current on the new forms, if they have them.

Q. Then, as I understand it, Mr. Schimmel, the billing listed on this document that you tender to the inspection bureau is canceled, and is no longer available for reshipment beyond Chicago by rail?

A. That is correct.

Q. Now, what, Mr. Schimmel, is your exhibit 78?

A. Exhibit 78 is offered in rebuttal to the testimony offered by witness Bradford. It deals with rates on grain from various lines in control and northern Illinois to Louisville, Kentucky, both via Chicago and via Indianapolis, and shows the extent to which a grain merchant at Indianapolis can purchase grain in Illinois to be thence reshipped to Louisville on a lower basis of through charges than a Chicago merchant storing grain at that point. This rate advantage to Indianapolis obtains from a substantial portion of the lake local territory south of the Illinois River, as well as from a substantial portion of Illinois extending beyond the lake local territory. I selected Louisville for the purpose of this comparison because of the tremendous quantity of corn moving to that point. From all territories the movement of corn to Louisville is a very substantial amount. Generally speaking, a similar situation, Chicago versus Indianapolis, is true in respect to the rates to Cin-[fol. 2066] cinnati, although there would be some variation here and there as compared with what is shown to Louisville on this exhibit.

Exam. Taylor: Is that all?

The Witness: That is all.

Exam. Taylor: Recess five minutes.

(A short recess was taken.)

Exam. Taylor: Gentlemen, come to order. Proceed, Mr. Belnap.

Mr. Belnap: That concludes Mr. Schimmel's direct.

Exam. Taylor: Are there any questions by protestants? (No response.) Cross-examine. Mr. Cole?

Cross-examination.

By Mr. Cole:

Q. Mr. Schimmel, at the beginning of your direct testimony you said that you were giving traffic evidence for the group; whom did you refer to as being represented by that group?

A. Cargill, Incorporated, Stratton Grain Company, Norris Grain Company;—Norris, by the way, will have another witness.—Continental Grain Company; Santa Fe Elevator Corporation; Rosenbaum Brothers; B. A. Eckhart Milling Company; E. R. Bacon Grain Company.

Q. Mr. Schimmel, when you had exhibit 68 before you you stated, as I made a note, that Note 40 of the tariff as carried in your exhibit 68 made applicable the proportional [fol. 2067] rate on both barge and lake grain.

Exam. Taylor: What page is that, Mr. Cole?

Mr. Cole: Note 40 is in exhibit 68, on the 5th page.

Exam. Taylor: That is the present Note 40, is it?

Mr. Cole: Yes, that is the present Note 40.

By Mr. Cole:

Q. I call your attention to the language beginning at the end of the 5th line of Note 40, reading this way: "Provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination;" and with that language in mind, I ask you whether on any shipments that you may know about, shipped by any of this group that you represent to Central Freight Association destinations, whether there was any attempt made to protect the application of the local rate from Chicago under the provisions of that phraseology that I just read to you?

A. Mr. Cole, I believe that you have the wrong note, or maybe I don't understand you; because the Note 40 on page 5 is the Note 40 in 245-F series, I think, which covers an application at Peoria.

Q. Well, can you tell me the page about which the present Note 40 from Chicago to Central Freight Association is shown, in your exhibit 68?

A. Page 13.

Exam. Taylor: Let us get it straight; what does the one [fol. 2068] on page 5 refer to, again?

A. It is rates to the Eastern territory, and applicable from Peoria, and not from Chicago. I understood we were talking about Chicago.

By Mr. Cole:

Q. And at page 13, Note 40, if you will refer to the fourth line in that Note 40, you will see a provision beginning this way,—and I am reading from there on, beginning with the word provided: "Provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the shipping point to destination." Did any of this group that you represent, Cargill, Stratton, Norris, Continental, Santa Fe, Rosenbaum,—do you know whether any of them ever protected the local rates from Chicago under the terms of that provision?

A. No, none, to my recollection.

Exam. Taylor: Let's see if I understand, now, Mr. Cole: you are asking this witness whether on any of the shipments made by the firms referred to charges at ultimate destination, including the rates into Chicago as well as the proportional or reshipping rates out, were less than the local rate from Chicago to the destination of the shipment out of Chicago.

Mr. Cole: Well, in effect, my question was that, Mr. Examiner; but I asked him whether they ever attempted to protect that provision.

[fol. 2069] Exam. Taylor: Who?

Mr. Cole: Any of these people that he represented.

Mr. Belnap: What do you mean by protect, Mr. Cole?

Exam. Taylor: That is the word that is bothering me.

Mr. Cole: Well, I will put it in a different way, then: on shipments of this barge grain to Chicago, which was later reshipped via rail from Chicago to destinations in Central Freight Association territory, do any of these people whom you represent, do you know whether the freight charges finally paid on that movement, the total charges did at least equal the local rate from Chicago to that final destination in Central Freight Association territory?

The Witness: Did at least equal?

By Mr. Cole:

Q. Yes, did at least equal.

A. I could not say as to the other firms just what their mechanics in their operation would be; whether they did or not. I never see their records. As to Continental, no.

Q. Looking at the latter part of that rule, subdivision E, it states, "On shipments which arrive by boat lines at Chicago, Illinois;" have you in the conduct of your business interpreted that provision as though it read "On shipments which arrive by barge line at Chicago, Illinois;" so that do you understand that boat and barge refers to the same thing?

A. There is another item in the——

Exam. Taylor: Well, can you make your answer respon- [fol. 2070] sive to the question and then make your explanation?

A. Yes, I consider the barge line the same as a boat line. It is synonymous; in the 535-A Series, ICC 3300, Item 5——

By Mr. Cole:

Q. What page?

A. Page 92; application of proportional rates,——

Q. Pardon me, Mr. Schimmel; I didn't follow where you were reading from?

A. 535-A, Item 5, proportional rates named herein which by their terms are limited in their application to traffic destined to or originating at specific points or territories including rates which are published for application on traffic from beyond, or when destined beyond, are applicable only when the entire through movement is performed by the rail carriers, or water-and-rail carriers under rates lawfully on file with the Interstate Commerce Commission.

The foregoing is not to affect any rates now published carrying provisions that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic. C. F. A., I. F. A. 21911.

Q. On page 1 of your exhibit 68 you carry five different series or bases of rates at the top of those columns; the first one, you say that that column refers to rates on grain originating in trans-Mississippi River territory; the next one, Northwest; the next one, re-shipping, and the next one, proportional. Is this the way it appeared in the tariff from which you took these rates to set them out here?

[fol. 2071] Exam. Taylor: Now, just a minute; I believe you stated there were five, you read four.

Mr. Cole: The next one is local. I didn't refer to that. Is that the way these different bases of rates appear in the tariff from which you took this material to put it on your exhibit?

The Witness: Yes, there is four distinct applications to Central Freight Association territory: proportional or reshipping, commonly called, to the Trunk Line territory; that makes the fifth, then, taken from the tariffs.

Exam. Taylor: Just let me understand it too, Mr. Cole.

Mr. Cole: Yes, sir.

Exam. Taylor: The first one, trans-Mississippi territory rates; does that apply to Central Freight Association?

The Witness: Yes, sir.

By Exam. Taylor:

Q. Not to Trunk Line; that does not apply to Trunk Line?

A. No, that does not apply to Trunk Line, no. It will apply under the—trans Mississippi billing will apply to Trunk Line territory.

Q. I mean the first one you have here.

A. Central Freight Association, yes.

Q. The second one, that applies to——

A. The Northwest.

Q. I know, but to what territory eastbound?

[fol. 2072] A. To Central Freight Association.

Q. How about the reshipping rates?

A. Also to Central Freight Association.

Q. And the proportional, or next to the last one?

A. Those rates apply to the Eastern Trunk Line territory.

Exam. Taylor: Thank you.

By Mr. Cole:

Q. Now, Mr. Schimmel, when you have gone to a rate tariff and discovered the rates set up under three bases, such as say trans-Mississippi, Northwest, and reshipping, and you see three levels of rates to the same destinations, what is it necessary for you, then, to do in order to dis-

cover which of those columns of rates you are going to use when you make a shipment?

A. If you will pick out some specific origin, I can answer your question.

Mr. Cole: Well, may I go off the record?

Exam. Taylor: Certainly, off the record.

(Discussion outside of the record.)

Exam. Taylor: Back on the record:

By Mr. Cole:

Q. If you have grain in Chicago which came to Chicago from some other point outside of Official territory, and you wanted to ship the grain beyond Chicago, and you looked into the tariff and you saw those three columns, how would you then determine what level of rate was to be applied to that movement beyond Chicago?

[fol. 2073] A. Then, again, I must ask you how this grain is sold. That would be the deciding factor with me.

Q. How the grain is sold?

A. How the grain is sold; that would cause me to determine which bill I would use. So I must know that before I can answer your question.

Q. Where you sold it, or how you sold it?

A. Destination; on what basis it is sold.

Q. You want to know the destination?

A. Well, and then too whether it is sold delivered or whether it is sold to that point delivered Philadelphia, or to what point; maybe it is sold delivered Ohio River.

Q. Well, suppose that you have in Chicago grain that came from points beyond Chicago, the origins not being located in Official territory however, and you have sold a car of grain to a man at Cleveland, Ohio, for consumption at Cleveland, Ohio; and you look in your tariff and you see these three columns of rates, trans-Mississippi, Northwest, and reshipping; how do you then determine what level is going to apply to that shipment from Chicago to Cleveland?

A. I would determine by the level of the rates. The trans-Mississippi is the lower rate.

Q. So that in that event you would use from Chicago to Cleveland the level of rate that is shown under the trans-Mississippi column?

[fol. 2074] A. If I had that kind of billing.

Q. That is what I am getting to; if you had in your office a bill that enabled you to use that rate, you would use that rate; is that what you have answered me?

Exam. Taylor: And that billing was properly registered?

The Witness: I don't think you quite get what I am driving at, either: that our transit operation is a little bit different than just strictly these reshipping rates. There would be other conditions there that might cause us to apply some other kind of a bill. We might decide to hold the trans-Mississippi bill for some other point that we might have sold. There would be too many complications enter into the application of this billing, that it is very difficult to say, Mr. Cole, unless I just had the billing in front of me.

Mr. Belnap: On the matter of emergency grain, I did not go into that; I did not understand Mr. Cole's question was directed to that. You have not testified on direct about emergency, and how you have handled billing in connection with sales; we are not going to have any cross-examination on it.

Mr. Cole: I think Mr. Schimmel can see what I am driving at; if I ask him this: supposing you as traffic manager of this outfit decided to use the trans-Mississippi billing on that shipment from Chicago over to Cleveland, what would you do in order to pick out a trans-Mississippi billing that would enable you to use rates under the trans-Mississippi column?

[fol. 2075] The Witness: I would check the trans-Mississippi territory naturally, and see if my point was within that territory.

By Mr. Cole:

Q. Where would you go to find out whether your origin was within trans-Mississippi territory?

A. The territorial directory.

Q. And where is that territorial directory?

A. You mean what territory?

Q. No, where is that directory; what would you go to now, to find out whether your origin was in trans-Mississippi territory?

A. I think it is published—Jones' 3-F; I don't know the ICC number.

Q. Is it the same territory that is covered in these notes that you carry in your exhibit 68?

A. Yes, that would be the same note.

Q. Those notes in exhibit 68 defining Northwest territory, its geographical limitations, and describing southwest territory and its geographical limitations, are those notes the same thing you referred to as the territorial directory?

A. I believe it is the same.

Q. Now, you say you would pick out a bill and you would see whether that origin point was actually located in the trans-Mississippi territory, then, wouldn't you?

A. Correct.

Q. Then, if you surrendered that bill for the car that you [fol. 2076] were shipping from Chicago over to Cleveland you would get the benefit of the trans-Mississippi River proportional rate out of Chicago, would you not?

A. That is right.

Q. Now, when you handle a shipment that you are making out of Chicago to the same place, from Chicago to Cleveland, you sold a man a car of grain for delivery at Cleveland for consumption at that point, he is not concerned with his ability to carry it on to the seaboard, or to ship it down to the Ohio River; and you want to use, and you decide you would like to use a portion of the stuff that moved in here along the Illinois waterway; so you go pick up your balance credit of your Illinois waterway inbound stuff; then what do you do to determine the application of the proper proportional rate on that?

A. Refer to the Note 40, 535-A, use the Northwest application. I don't know why.

Q. That is right; and the final point that you are brought to there is the level of these rates which are carried in these tariffs under a column headed "Northwest," is that not so?

A. That is right.

Q. So in that event, through the machinations of this cancellation of the documents with the transit bill you have definitely used a shipment which came from the Illinois territory as an origin, going to Cleveland as a destination, [fol. 2077] some matter that originated within Official territory for destination within Official territory and applied

against it a balance or proportion that was carried in a tariff headed "Northwest"; is that correct?

A. Yes, that is correct.

Q. In reference to your exhibit No. 69, there was some discussion of this matter of equalization; you said that grain from the Illinois origins was not equalized through Chicago and Peoria to destinations either in Central Freight Association territory or Trunk Line territory, didn't you, Mr. Schimmel?

A. I mentioned Battle Creek and Detroit as specific.

Q. Those are destinations in the Official territory?

A. Yes.

Q. Do you understand the difference between this situation and the situation that I will call to your attention later; there is grain moving from origins outside of Official territory, Southwestern origins, and Northwestern origins, to the various gateways, thence to destinations in Central Freight Association territory, Trunk Line territory: now, are you familiar with, or do you know whether that grain which moves from Southwest territory and Northwest territory is equalized through Chicago, Peoria and St. Louis?

A. Yes.

Q. That grain is?

A. Minneapolis and Duluth as to Chicago and Peoria are [fol. 2078] equalized; I do not believe St. Louis is equalized in adjustments to the east.

Q. That is correct; on Northwest grain Chicago and Peoria are equalized, and it does not extend down to St. Louis; and on Southwest all three of them are equalized, Chicago, Peoria, and St. Louis?

A. That is correct.

Q. Now, when you get east of those gateways, or when you get within the limits of Official territory for your points of origin there, is there two applications of rates, one set of rates that would enable a man to go from that Official territory origin to a gateway such as Chicago, then reship to his point of destination; and another set of rates which would enable him to use his through rate from his point of origin to destination? Didn't he make either kind of a shipment?

A. I do not believe I understand that, Mr. Cole; you are coming from Official territory?

Q. Yes; say Morris, Illinois to Cleveland, Ohio; is there

a through rail rate from Morris, Illinois to Cleveland, Ohio, through one-factor rate from Morris, Illinois?

A. No.

Exam. Taylor: All-rail, you are talking about?

Mr. Cole: All-rail.

The Witness: Right.

By Mr. Cole:

Q. Is there a through one-factor rate from Kankakee, [fol. 2079] Illinois, to Cleveland, Ohio?

A. There is.

Q. Now, suppose a man at Kankakee, Illinois, wants to ship a carload of grain to Cleveland, Ohio: that man could ship it straight from Kankakee to Cleveland, Ohio, could he not, and use a through rate?

A. Certainly.

Q. That man at Kankakee, Illinois, could also ship his grain to Chicago, could he not?

A. And on to Cleveland on the through rate?

Q. Yes.

A. I don't believe he could.

Q. Do you know of any points down in the Illinois territory within Official territory having through rates, say to Trunk Line territory, from which origins the man could ship his grain direct and use the through rate, and from which origins a man could also ship his grain to Chicago, transit it there, and reship it on the balance of the through rate; so that in either event he would pay the same amount of transportation charges, rail?

A. Yes, under transit.

Q. Now, when you said that Illinois origins were not equalized through the different destinations, didn't you refer wholly to grain which originated within Official territory?

A. No; if we are speaking of equalization, Chicago [fol. 2080] equalizing with Peoria.

Q. That is all I am speaking about; that is right.

A. You have got a different situation: now, taking the separately established factors to Peoria, for instance, from say, Chillicothe, Illinois, the factor into Peoria, I think, from Mr. Tannehill's exhibits, or Mr. Wheat's, is 7½ cents. The rate on to New York is 28 cents from Peoria. That

would give 35½ cents on the separately established factors. The factors via Chicago are 12-26, 38 cents.

Q. And what origin point were you using?

A. Chillicothe, Illinois.

Q. And is that origin point within Official territory?

A. I believe it is.

Q. Then, again, Mr. Schimmel, every time you referred to there not being equalization, were you referring to origins within Official territory?

Mr. Belnap: Your question is Illinois, in Official territory?

Mr. Cole: Oh, no; he said that at certain places this equalization did not work out.

Mr. Belnap: He said from Illinois.

The Witness: I said from Illinois; Official territory, we are going east of us here.

Mr. Cole: That answer will straighten it out; thank you. Grain originating in Illinois and moving to Chicago, when [fol. 2081] it moves east of Chicago uses the reshipping rates, I believe you said on your direct testimony, didn't you,—uses the column of rates headed "Reshipping"?

The Witness: Yes; there may be a lower through rate.

By Mr. Cole:

Q. But if there isn't any transit balance, then the Illinois grain uses the column headed "Reshipping" on exhibit 68, that kind of rate, does it not?

A. Yes.

Q. Now, are you familiar with the fact that the factors shown under the first two columns; that is, trans-Mississippi and the Northwest—we are back on 68 now—are you familiar with the fact that the factors on those columns were definitely prescribed by the Commission as equalizing factors, were they not?

A. What columns was that?

Mr. Belnap: Trans-Mississippi and the Northwest, Mr. Schimmel.

The Witness: Yes, the Northwest,—that is an equalized rate; that is prescribed.

By Exam. Taylor:

Q. In other words, it takes into consideration a lower rate from the Northwest into Chicago than from Trans-Mississippi territory into Chicago?

Mr. Cole: Correct. Now, when water grain along the Illinois waterway gets up to Chicago, that water grain has in the past, and at present is being accorded not the level of rates under that reshipping column, but the level of [fol. 2082] rates under the Northwest column; is it not?

The Witness: That is correct.

Exam. Taylor: To Central Freight Association territory?

Mr. Cole: To Central Freight Association territory. In your exhibit No. 68 there are shown first quite a number of rules covering the application of reshipping or proportional rates on traffic originating in trans-Mississippi River territory, beginning with Note 25?

Exam. Taylor: On what page?

Mr. Cole: On page 4 of exhibit 68. Do you see that?

The Witness: Yes, sir; you are talking now about Peoria.

By Mr. Cole:

Q. Well, I am talking about all of these rules that are headed Application of Reshipping or Proportional rates on traffic originating in trans-Mississippi territory.

A. Well, we ought to be specific: this particular note covers Peoria, Mr. Cole. I don't know if you want to talk about Peoria, why, O. K.

Q. What I am getting at is this: now, turn over to the—what page is the Chicago note?

A. Going to Trunk Line, or CFA?

Q. Central Freight Association, from trans-Mississippi.

A. Chicago and Peoria are in the same item; it is present Note No. 20, on page 12.

Mr. Belnap: Page 12; this is the Central Freight Association?

[fol. 2083] The Witness: Yes.

By Mr. Cole:

Q. Now, Note 20 on this page, then, covers the application of reshipping or proportional rates on traffic originating in trans-Mississippi River territory?

Exam. Taylor: Destined to Trunk Line?

Mr. Cole: To Central Freight Association. Now, where is the corresponding rule covering the application of the rates on traffic originating in Northwest territory?

The Witness: The present note?

By Mr. Cole:

Q. Yes; that is Note 40, on the next page, isn't it?
A. That is Note 40 on page 13.

By Exam. Taylor:

Q. That is from Chicago to Central Freight Association?
A. Yes, sir.

By Mr. Cole:

Q. Covering the traffic that originates in the trans-Mississippi River territory, any reference of any kind pertaining to ex-water grain, whether it is river, lake, or any other kind of ex-water?

A. Yes; it says here proportional rates applicable on traffic reaching the reshipping point via rail or water transportation lines.

By Exam. Taylor:

Q. Where are you reading from now, Mr. Witness?
A. Page 12, the third line.

[fol. 2084] By Mr. Cole:

Q. So that if you originate on barge line the shipment of grain in trans-Mississippi River territory, carry that shipment in the barge to Chicago, and want to ship that grain outside of Chicago, beyond Chicago to destinations in Central Freight Association territory, would this Note 20 enable you to use the level of the ex-trans-Mississippi rates on that grain?

A. No, not according to the interpretation placed on the tariff.

Q. Mr. Schimmel, in your understanding of the difference between the two notes, why is it necessary on ex-barge traffic to use the ex-Northwest proportional, even if the grain actually originates at Kansas City, Missouri?

Mr. Belnap: I am perfectly happy to have Mr. Schimmel go along on this subject; I would like to understand whether it is your view that this is the type of testimony which is appropriate as to the true application of the rates that are here in issue.

Exam. Taylor: I would like you to tell me why it is not?

Mr. Belnap: I think it is; I am trying to get that point; if it is, it is swell with me, because I want to put some on, some railroad people.

Exam. Taylor: I think it is proper.

Mr. Cole: Now, you understand I am trying to find out what he actually does.

[fol. 2085] Mr. Belnap: He has told you he applies Note 40; now, you want to know why.

Mr. Cole: Yes, in his mind why that is so.

Mr. Brown: You mean why Note 40 reads as it does?

Mr. Cole: No, sir.

The Witness: You mean why they apply Note 40, instead of Note 20?

By Mr. Cole:

Q. Yes, instead of Note 20.

A. That is what I have been trying to find out; I would like to know.

Q. Will you look, please, at your exhibit No. 71; will you please note that under the first rate column headed "Present Barge Rail Rate to Baltimore, Domestic", it gives a figure of 26.75; over under the barge-lake-rail column it gives a rate of 28.51 cents; notice those two lines?

A. Yes.

Q. Is that correct, Mr. Schimmel, in showing that at present may move from Morris via barge to Chicago, thence all-rail from Chicago to Baltimore at actually a lower charge than had that same grain moved barge to Chicago, lake from Chicago to Buffalo, and thence rail to Baltimore?

A. Yes, that is true; for the reason that the lake rate from Chicago to Buffalo, the figure used, of 6.25 cents is abnormally high. Otherwise, it would be, the barge-lake-rail would be very close to the present barge-rail rate; that [fol. 2086] is, under normal lake conditions, lake rates.

Q. Now, if you will look at the bottom of exhibit 71, the export situation as I understand it, it shows that the barge handling to Chicago and the rail movement from Chicago to all of these points of destination, under the application of these proportional rates, to the barge business, it would actually result today in lower charges than if the grain would move all-water, barge to Chicago, lake from Chicago to Buffalo, and then rail from Buffalo on to destination; is that correct?

A. That is also in that——

Q. Mr. Schimmel, in your experience as a rate expert, would you say that it was usual or unusual to find a rate situation where a shorter water haul and a longer rail haul actually resulted in substantially lower charges than a long water haul connected up with a short rail haul?

The Witness: Read that question, please.

(Question read.)

A. Usually the long water haul is the cheaper.

Q. On your exhibit 67, Mr. Schimmel, on the first page, the second group of figures where it says "via rail, lake-local, received inbound," and then outside of that, on the other side, "Disposition outbound,"——

A. Wait a minute; you said exhibit 67.

Q. Exhibit 77.

A. Exhibit 77?

[fol. 2087] Q. Yes, sir;—it shows that there was 1,364,960 pounds of that canceled for rail movement beyond Chicago; would not that rail movement beyond Chicago have to be corrected back, so that it would pay the Illinois proportional level of rates into Chicago, rather than the lake-local?

A. No.

Q. There is possible rail application beyond Chicago on the grain that gets into Chicago on the lake local?

A. Yes, sir.

Q. Where is that, what destination territory?

A. Well, over to Battle Creek, Mr. Cole. We bill on the balance of the rate we pay in, 9 cents; the through rate is 19 cents, we go out for 10 cents. So we do not pay any more, we do not change that outbound rate—that is what you inquired about?

Q. Oh, then, on the outbound movement you check back to the point of origin and find that that grain is entitled to a through rate from the point of origin?

A. Yes.

Q. In which event it is a transit operation at Chicago, and you apply only the transit balance; is that right?

A. Yes, that is right.

Q. Now, this rail application outbound, then, on the arrivals on the lake local, would they represent such hand-

ling where they rebilled it from Chicago on the balance of the through rate from the point of origin?

[fol. 2088] A. That is not quite clear to me, just what you are driving at, Mr. Cole.

Mr. Belnap: Do you want to know if it is like this Battle Creek situation?

Mr. Cole: Yes. Is this disposition shown via lake local, is that disposition like that Battle Creek situation?

The Witness: Yes, it is.

By Mr. Cole:

Q. Now we get down to the third column, which shows the arrivals via barge, and the disposition of that barge arrived grain; and it shows some 90 per cent of the disposition to be via lake. In your experience, and that which you have had under your experience, what would you say would be the fair average of the disposition of the water-arrived grain at Chicago, the river-arrived grain, as between outbound via rail and outbound via lake?

A. Now we are talking about the same period during the year, is that right?

Q. Oh, no; I said in your experience, now, since the water grain has been coming up to Chicago, what would be your experience as to the percentage that went out of Chicago via rail and the percentage that went out of Chicago lake,—your stuff that you billed; you are traffic manager.

A. I would have to make an awful guess.

Q. Well, can you get reasonably close enough so that we can put some reliance on it?

[fol. 2089] Mr. Belnap: May I say something off the record?

Mr. Cole: Surely.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Back on the record.

By Mr. Cole:

Q. Mr. Schimmel, of the total traffic that moved from origins along the Illinois River, by the river to Chicago, did you hear the testimony of the previous witness who tes-

tified that of the outgoing business 70 per cent was canceled for outbound movement over the lakes?

A. I did, yes.

Q. In your experience, would it be safe to say that at least that was a conservative figure?

A. No.

Q. You would not say so; what would, in your experience, be the destinations of the grain that was canceled for rail billing?

A. Ex-barge billing?

Q. Yes.

A. And rail destinations?

Q. Yes; what would be the destination territory to which you would ship ex-barge billing via rail?

A. Well, it might be almost any point. It would depend on business, Central Freight Association, Trunk Line.

Q. And what, in your mind, would be the determining factor which would control your selection of the ex-barge bill-
[fol. 2090] ing for such a rail shipment to a destination like that?

Mr. Belnap: Mr. Examiner, I have not asked this witness about merchandising questions. If you are talking about how to get at it in the past, that is one question; if you are talking about merchandising of grain, then I object. I did not go into it on direct.

Mr. Cole: I am trying to get from him—he is a traffic man; he is a rate expert.

Mr. Belnap: He cancels the billing.

Mr Cole: He cancels the billing; and I am simply asking him what factor was it that he went to determine whether he was going to cancel ex-lake billing or ex-rail billing on a shipment to any destination.

The Witness: That is so involved, Mr. Cole, that it would be almost impossible to answer that. You have no particular point, and my file is full of tonnage and I wouldn't know unless I sat down and figured out what billing I want to apply.

By Mr. Cole:

Q. Well, if you have a car going from Chicago to Cleveland, and you had a car in Chicago, or if you had a transit bill in Chicago that had come in from a point that had a through rate, from some point in Illinois to Cleveland, you

would probably use that bill in order to get the cheapest balance out of Chicago to Cleveland, wouldn't you?

A. Ordinarily, yes.

[fol. 2091] Q. And could we not take it as a general proposition that when you make a shipment from Chicago to any destination, whether it be in Trunk Line territory or Central Freight Association territory, you will select from your office a transit credit that enables you to go out on the cheapest balance, wouldn't you?

A. Not always.

Q. When you don't, are you preserving that transit credit because it could be more valuable in some other disposition?

A. Possibly so.

Q. In your introduction, and speaking of this exhibit 79 that was introduced only for the purpose of illustrating the workings of your getting grain in and shipping it out, was it not to connect up the free transit arrangement?

A. Exhibit 79 was to furnish an exact copy of the John I. Hay Company form of bill of lading.

Q. Do you know how long they have used this particular form of bill of lading, with all of its terms, contracts, and conditions?

A. To my knowledge, over a year.

Mr. Belnap: Is that the uniform bill of lading, Mr. Schimmel?

The Witness: Yes, sir.

By Mr. Belnap:

Q. The one that rail carriers use?

A. I think the identical terms that are on a rail bill of [fols. 2092-2094] lading are on that bill of lading.

Mr. Cole: I was just noticing some of the terms that when we read them with the few at the head of the bill of lading and we have a water carrier, it does present some peculiar problems. That is all I have.

Mr. Belnap: The Federal Barge Line use the uniform bill of lading on their shipments.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: I think we will adjourn until 9:00 o'clock tomorrow morning at this time. It is 5:00 o'clock.

(At 5:00 o'clock p. m., an adjournment was taken to 9:00 o'clock a. m., Wednesday, January 24, 1940.)

[fol. 2095] Morrison Hotel, Chicago, Illinois,
Wednesday, January 24, 1940.

Met, pursuant to adjournment at 9:00 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances:

As heretofore noted.

Proceedings

Exam. Taylor: All right; gentlemen. Are you ready to proceed? Mr. Cole, have you finished with your cross-examination?

Mr. Cole: Yes, sir.

Exam. Taylor: Mr. Enoch.

J. J. Schimmel, resumed:

Cross-examination (continued).

By Mr. Enoch:

Q. Mr. Schimmel, when did you go with Continental Grain Company?

A. March 1, 1938.

Q. March 1, 1938?

A. Yes.

Q. Prior to that time you were with the Farmers' National Grain Corporation?

A. That is right.

[fol. 2096] Q. And when you were the Farmers' National you had a good deal of experience with this barge grain, didn't you?

A. I did.

Shipping to Memphis and points south, but never much to Chicago?

A. Well, there were movements into Chicago.

Q. Was the John I. Hay Company using a bill of lading such as exhibit 79 when you first went with the Continental Grain Company?

A. My recollection is, Mr. Enoch, that all the shipments we have ever had over the John I. Hay were on that form of uniform bill of lading, such as exhibit 79.

Q. Back as far as 1938?

A. I don't remember the date of our first shipment by water, with Continental. I do not recall about that. But that is the only lading that I can remember that Hay has ever used.

Q. Weren't there times when no bill of lading was issued?

A. No; there was always a bill of lading issued.

Q. Didn't the Continental Grain Company have a contract arrangement with John I. Hay at one time?

A. No written contract.

Q. Did they have an oral conract?

A. Yes; he agreed to haul for us whatever we might have to offer.

Q. And you agreed upon a rate for that service?

[fol. 2097] A. Yes, sir.

Q. Is that oral agreement in effect now?

A. Yes.

Q. Did that run for a month, or six months, or a year, or any particular period of time?

A. Well, as long as the business was satisfactory to Hay and to us, why, it would continue on.

Q. Do you have any similar agreement with any other barge operator?

A. We are trying to operate with Mechling now. As a matter of fact, there has been a few shipments came in over the Mechling Line before the river froze up; and we expect to use it—we expect to use Hay with one barge and Mechling with other barges.

Q. How much corn, if there is no objection to your stating it from a business standpoint, did you get by barge in 1939? The whole year?

Q. Yes.

A. I don't have those figures for the whole year.

Q. With respect to 1939, didn't other barge lines than the John I. Hay Company handle the bulk of your receipts?

A. Other than John I. Hay? No, Hay handled a large portion of our business.

Q. I am talking about corn now.

A. Corn, yes.

[fol. 2098] Q. As I understand your exhibit 77, you received via barge during the period May 1, 1939, to January 14, 1940, some 235,000,000 pounds?

A. Yes.

Q. Do you think that John I. Hay Company brought in the bulk of that?

A. Oh, yes. Now, if you are talking about the Morris grain, that we purchase down there,—I am talking about the elevators that we operate, not the grain that we buy from the Cooperative Allied or Lowell-Hoit & Company; you asked me if we bid, and I was talking about our own facilities.

Q. Well, I am talking about the grain that comes to you by barge at Chicago, regardless of whom you buy it from.

A. Well, then, the situation as a whole, Mechling hauled in a substantial quantity of it.

Q. In 1939?

A. Yes.

Q. And any other company?

A. John I. Hay.

Q. I mean besides Mechling and John I. Hay?

A. That is all, I think. There was another party, too, that came in; that was the Lawrence Transportation Company, that brought in a barge or two. And another barge from—I can't think of the name of this operator; I believe it is in the record some place, but there was another barge [fol. 2099] came in by another company.

Q. Did you have the same kind of an oral agreement with Lawrence Transportation Company that you had in respect to John I. Hay?

A. No; the W. W. Dewey Company engaged the Lawrence Transportation Company to handle those barges.

Q. Other than this one barge, you never received any corn brought here by the lawrence Transportation Company?

A. There was more than one barge, Mr. Enoch; it was a few barges; let us put it that way.

Q. Has the Continental Grain Company any interest, financially, direct or indirect, in the John I. Hay Company?

A. No, sir.

Q. Did they ever have?

A. Never had.

Q. In any other barge line?

A. No, sir.

Q. Now or in the past?

A. No, sir.

Q. Does the Continental Grain Company or any of its officers hold any stock in any of these barge lines?

A. No, sir.

Q. Has it in the past?

A. No, sir.

Q. Did you say on your direct examination that the document which you surrenderd to the Eastern lines in order to [fol.2100] engage the outbound movement of your corn on a proportional rate, which is brought into Chicago by Mechling Barge Line, was made out by Mechling or in your office?

A. Neither; the freight bill is made out by Lowell-Hoit & Company; and then I further amended that, but some of these bills are made out just recently, since this proceeding started by Mechling, at Joliet.

By Exam. Taylor:

Q. That is a change in the practice, isn't it, of the Mechling Company?

A. Yes; the business of the co-operative Allied is handled—Lowell-Hoit & Company make up the freight bills. Where we engage Mechling for our own business he makes them up in his office at Joliet.

Q. I understood you to say that since this case started Mechling people started to make out the bills, instead of Lowell-Hoit?

A. No, correct that: on our own business.

By Mr. Enoch:

Q. What do you mean by your own business?

A. Grain shipped for the Continental.

By Exam. Taylor:

Q. From your own elevators?

A. Yes, sir. On those barges, the Mechling Barge Line at Joliet make up the freight bill and mail it in to us.

Q. Make it up at Joliet?

A. Joliet.

Mr. Belnap: Has that always been true, as to Mechling [fol. 2101] handling grain shipped by Continental?

A. Yes.

Exam. Taylor: All right; go on from that. You had not finished, had you?

The Witness (Continuing): Well, I was going to say that then, on the other hand, on the business handled—put it this way: the grain purchased from the Co-operative Allied, the freight bills are made up in Chicago for the account of Mechling by Lowell-Hoit & Company.

Mr. Belnap: I think that is confusing in the record, Mr. Examiner, because before he said it was made up for the account of Allied Barge Corporation by Lowell-Hoit & Company. I only interrupt because I want the record to be clear. Are they made up for the Allied Barge Corporation?

The Witness: Made up for the Allied Barge Corporation. I was mistaken on that. That is what I said yesterday, and I was a little confused on it.

Exam. Taylor: You just made a statement to Mr. Enoch that since this case was begun up here, that some change had taken place; just a few questions back.

The Witness: Yes.

By Exam. Taylor:

Q. Explain that change?

A. That is in the instances where the Continental are shipping the grain from our own river elevators. In that case, and since that has occurred, A. L. Mechling make out [fol. 2102] their freight bills, and mail them direct to us.

Q. What was the previous practice?

A. The previous practice on this direct business, Mechling also mailed us the freight bill direct from Joliet.

Q. Well, I cannot see the change, then.

A. Well, Mr. Examiner, I was somewhat confused in this: that we recently have engaged Mechling to handle some of our river business. However, on the business that we did do with Mechling before, it was handled in the same manner as on these later shipments since the proceeding started.

Exam. Taylor: Mr. Reporter, go back to the question I referred to, in answer to Mr. Enoch.

(Questions and answers read by the reporter.)

Exam. Taylor: That is what I am talking about.

The Witness: That answer should be yes.

Mr. Belnap: Now, what about your first statement, Mr. Schimmel; you said just recently, since this proceeding started? Isn't the point, Mr. Examiner, whether he first stated it correctly, or now?

Exam. Taylor: I think so.
The Witness: May I restate it?
Mr. Belnap: May we go off the record?
Exam. Taylor: Off the record.

(Discussion outside of the record.)

The Witness: On grain purchased from the Coopera-
[fol. 2103] tive Allied Grain Dealers, the freight bill is made out by Lowell-Hoit & Company for account of the Allied Barge Corporation. On grain moving from Continental's own river facilities, transported by A. L. Mechling Barge Line, freight bills are rendered direct to Continental by the A. L. Mechling Barge Line. Does that take care of it?
Mr. Belnap: It does not state whether or not you correctly stated the fact when you told Mr. Enoch there had been a change; did you correctly state the fact then?
The Witness: I did not correctly state the fact.
Exam. Taylor: Proceed, Mr. Enoch.

By Mr. Enoch:

Q. I understand now this document which you register for the purpose of engaging this outbound proportional rate, so far as corn that is transported by the Mechling Barge Line is concerned, is made out in Mechling's office in Joliet?
A. The grain that we ship from our own facility is.
Q. That is the only grain that Mechling transports for you in his own behalf?
A. Yes.
Q. I understand that the expense bill is made out in Joliet?
A. Correct.

Mr. Day: You said expense bill?
Mr. Enoch: That is what I meant; the so-called expense bill, that is made out in Joliet.
The Witness: Yes.

[fol. 2104] By Mr. Enoch:

Q. Is that expense bill a receipt for the charges? That is what it is, isn't it?
A. Yes.

Q. And where do you pay the barge line operator, in Joliet or Chicago?

Exam. Taylor: You are still talking of his own grain, and not the Allied Co-operative grain?

Mr. Enoch: Yes, I am talking about grain transported by Mechling as the transporter.

The Witness: I think I explained that yesterday, that as soon as the out-turn weight is obtained by us we mark that weight on the freight bill, correct the freight bill to the out-turn weight, and mail Mechling a check together with that freight bill; and he in turn returns that to us marked paid, the freight bill. And then the procedure is to register the bill with the joint agency.

Q. Then it is really made out in your office?

A. No, sir.

Q. The form is filled out in your office, and you send it to Joliet for signature?

A. It is filled out by Mechling, and we send it back to Mechling, you might say, in practically the same manner that we do a rail freight bill.

Q. Is this the situation: the barge comes in and it is unloaded at South Chicago; and then they go back to Joliet [fol. 2105] and make out an expense bill, and then forward that to you at Chicago; and you put in the weights on that, and after you put them in you send it back to Mechling at Joliet again, and he signs it and then sends it to you for the second or third time?

A. No; when the barge leaves the Illinois River landing on the way into Chicago, I explained yesterday, we inform Mechling of the billed weight. He issues a bill of lading. Along with that bill of lading he sends the freight bill; the freight bill is on the basis of the billed weights. All the other information on that bill is billed in, with the exception of the out-turn weight, which is not known at that time, while the barge is on the way to South Chicago.

By Exam. Taylor:

Q. And the billed weight that you just mentioned is in bushels, rather than pounds?

A. On Mechling's bills, they are in pounds. Does that answer your question?

By Mr. Enoch:

Q. Well, the bill of lading is made out down at the origin point, isn't it?

A. Made out at Joliet.

Q. Where is it signed by Mechling?

A. At Joliet.

Q. Signed before the grain is loaded in the barge, or after?

A. After it is loaded in the barge.

Q. Moved out of the point of origin before you get a bill of lading?

[fol. 2106] A. Yes; that is possible, and it does occur. A barge may be finished loading at eight or nine o'clock at night, and it will be impossible to get a bill of lading made out until the following day, and it comes in the mail to us.

Q. Will you look at your exhibit 77; was that grain that is shown opposite lake locals the grain that was purchased by the Continental during the period shown at a discount?

Mr. Belnap: Mr. Examiner, I didn't ask this witness about the purchase of grain. I am going to have a witness on the stand who does purchase the grain; I think it would be well if you would ask these questions of him, Mr. Enoch.

Mr. Enoch: All right. Mr. Schimmel, you have had a good deal of experience in finding rates in tariffs; is there usually a section in the tariff entitled Application of Rates?

The Witness: There is.

By Mr. Enoch:

Q. Is it customary for that to contain provisions relating to the application of rates?

A. Yes, sir.

Q. Now, did you set out any of the provisions in the application of rate section in your exhibit 68?

A. I did.

Q. Where is that, Mr. Schimmel?

A. Pages 4 to 17, inclusive.

Q. Those are principally notes, are they not, to which reference is made in the provisions in the application of [fol. 2107] rate section?

A. Yes, they are notes, and cover the application of rates.

Q. But you do not cite the principal portion of that section, do you, of the tariff, other than the notes?

A. No, just the notes is all that I have shown here.

Q. I understand that your reliance in part in support of the application of proportional rates to the Eastern Trunk Line territory is on Note 20 on page 4 of exhibit 68? Is that right, Mr. Schimmel?

A. Yes, that is correct.

Q. Now, is there any other note on that business from Chicago to Trunk Line territory upon which you rely, that is set out here on exhibit 68?

A. No, that is the only note that——

Q. And you rely upon Note 40, page 13, of the same exhibit, insofar as the business to Central Freight Association territory is concerned?

A. That is correct.

Q. Any other note in connection with that traffic to Central Freight Association territory?

A. Are you referring to just the Northwest—are you referring to anything other than the Northwest application?

Q. Yes, what I refer to is——

A. There are other notes, Mr. Enoch, that are referred to, covering reshipping rates: Note 45; and trans-Mis- [fol. 2108] sissippi is covered by Notes 20 and 50 in No. 535. There are various notes,—and Note 40 explains the Northwest application.

Mr. Brown: Mr. Enoch, do all your questions now relate to barge grain to be shipped out?

Mr. Enoch: Yes. Are there any other notes than 40 on which you rely to Central Freight Association territory, that are set out here in exhibit 68?

The Witness: Yes, there is another.

By Mr. Enoch:

Q. What is that?

A. Note——

Exam. Taylor: Give us the page number.

Mr. Belnap: Mr. Enoch's question goes to the exhibit only; he said, are there any other notes in this exhibit on which you rely?

The Witness: No.

By Mr. Enoch:

Q. Now, do you consider that this barge grain that you receive and put into your elevator, and later ship out, is transited by you?

Mr. Belnap: I object to that, Mr. Examiner. That is a question of legal conclusion.

Mr. Enoch: All right; do you rely upon any provisions of the transit tariff?

Mr. Belnap: For the application of rates, you are talking about now, are you not?

Mr. Enoch: No, I am talking about his contention here. [fol. 2109] Mr. Belnap: Which goes to the application of rates?

Mr. Enoch: Yes, practically speaking, that is right.

Mr. Belnap: I think the question upon what parties rely should properly be addressed to counsel.

Mr. Enoch: All right; I will ask you the question.

Mr. Day: That is what we have been contending right along, as to tariff applications.

Mr. Belnap: I did not talk about tariff applications; I am tallking about questions as to what parties rely on. We rely for the application of the rates, purely on the notes contained on exhibit 68; and I think in elaboration of that Mr. Schimmel read from Jones' ICC 3300, Item 5, on which we also rely.

Mr. Enoch: I do not want to press you on this; but you would not take the position, would you, that insofar as this business is concerned we could throw the transit tariff out of the window?

Mr. Belnap: You have got to police the application of rates so as to determine that you actually have the amount of business that the rate application bears upon; that that in itself does not bear upon the application of the rates. Certain mechanical things you have to do; they are provided in the transit tariff. In order to have a shipment to get a rate on——

Exam. Taylor: Let me see if I get you straight; it is [fol. 2110] your position that so far as the rate tariff covers the rules and regulations covering this traffic, that should be applied. If it also contains policing rules which are also carried in the transit tariff, that the policing rules or

similiar rules carried in the rate tariff supersede similar rules carried in the transit tariff; is that your position?

Mr. Belnap: I do not understand there are any policing rules in the rate tariff.

Exam. Taylor: So you have got to go to the transit tariff to get the policing rules?

Mr. Belnap: That is right.

Mr. Enoch: What I have in mind, this grain comes in via barge and is put in an elevator. That inbound movement is complete, and the shipper does not have to do anything more with that grain, so far as transporting is concerned. If he uses it for consumption in Chicago, that is all right. If it goes in a car after a month, or six months in the elevator, I would like to know whether the protestants here place any reliance upon the transit tariff, in the way of relying upon that tariff so as to be able to say that although that grain was stopped for a month or six months in the elevator, nevertheless it really has been in transit all of the time.

Mr. Belnap: Mr. Examiner, as I view it, on either ex-lake or ex-barge grain rates applicable outbound are not applied in the sense of having a through shipment tempo- [fol. 2111] rarily interrupted at a transit point. Because the inbound movement is not subject to the Commission's regulation, and there could not be any such thing on either ex-barge or ex-river traffic on the fiction of a continuous movement temporarily interrupted.

Exam. Taylor: I just have one more question, then: what is the purpose of the notation at the bottom of the shipping instructions to the East?

Mr. Belnap: And on the ex-lake too.

Exam. Taylor: The shipper must make a certificate at the bottom of this shipping instruction: "This is to certify that the billing listed under inbound is applicable to the commodity forwarded as provided in C. F. A. Tariff No. 413-K, ICC No. 3204."

Mr. Belnap: Well, as I understand, these houses into which go the ex-river grain may have rail grain, they may have truck grain in them. That is true of any transit, as to any commodities. And it is necessary for the carriers to police the application of their rates so as to be sure that the tonnage in the house, and shipped out from the house, will correspond from a record standpoint with what is

provided in this transit tariff. You have got to keep a record of what you bring in and what you ship out. You have got to balance it all of the time. If you dispose of anything locally, you have got to cancel that out. That balance [fol. 2112] is also contained, which was shown yesterday, in a sheet submitted to the inspection bureau for the cancellation of tonnage on ex-barge and lake shipments; it goes to the cancellation of tonnage.

Exam. Taylor: I did not want to argue this; I just wanted to get the application. The argument will be saved for the brief.

By Mr. Enoch:

Q. Do you put rail grain, barge grain, and truck grain in this Rock Island elevator that you are using out at South Chicago?

A. No truck grain.

Q. Do you handle any grain by trucks at all?

A. None whatever.

Q. Did you have any rail shipments to any particular Central Freight Association points to which you can direct our attention, back of which you surrendered barge billing?

Mr. Belnap: Do you want a specific destination?

Mr. Enoch: Yes.

Mr. Belnap: Do you have those we had yesterday?

The Witness: I do not have a Central Freight Association destination; I have a truck line destination.

Mr. Belnap: Is that the 205 cars you referred to? Do you refer to the 205 cars, Mr. Enoch?

Mr. Enoch: No, I was not referring to any particular cars. That is all I have.

Exam. Taylor: Did you withdraw the question and re- [fol. 2113] quest that you gave?

Mr. Enoch: Yes.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. Mr. Schimmel, you stated, as I recall, that where a barge handled 1500 tons he made a charge of 2.675 cents per hundred pounds?

A. I do not recall making that statement, Mr. Day.

Q. And that where there was a thousand tons, for instance, the charge was a cent higher; you do not recall that?

A. I do not recall the figure you gave, 2,675. That 1500 tons minimum that I spoke of was in connection with the Federal Barge Line rates, and applied on a 6½ cent rate from these Illinois River landings to Chicago; but that if it was 1,000 tons the rate would be one cent higher, or 7½ cents.

Q. What Illinois River landings were covered by those charges?

A. All the way down the river, to St. Louis.

Q. Anything between St. Louis and Joliet was to pay this charge that you stated, 2.675 cents?

A. Are you talking now about this Federal Barge rate, or the independent barge rate?

Q. You tell me first what you had reference to when you stated this figure of 2.675.

A. The 2.675 is the rate that we paid the John I. Hay Company for shipments made from our own elevator at LaSalle to Chicago.

Q. And that charge covers a barge load, as I understand it?

[fol. 2114] A. A barge load, whether there is 1500 or 1,000 tons. Well, generally speaking Hay's would run around forty to forty-five thousand bushels.

Mr. Belnap. What is that in tonnage?

The Witness: It would be about 1350 tons.

By Mr. Day:

Q. What I am getting at is whether this charge of his applies to any weight that you might ship?

A. Well, in my experience, we have never had anything lower than 36,000 bushels in those Hay barges.

Q. Then, as I understand it, there has never been anything except that one charge, as far as Hay is concerned?

A. Just the one charge.

Q. You never paid the higher charge, because there was a smaller quantity of grain in the barge?

A. No, sir.

Q. Is that actually the charge he makes, 2.675; or is it a per bushel charge?

A. It is a per bushel charge; and corn figured at 56 pounds per bushel makes 2.675 per hundred.

Q. It is just a matter of mathematics; anybody can figure that by knowing that corn is 56 pounds per bushel; but you can take my word, there is a difference.

A. It figures 1.498 cents per bushel.

Q. Well, it just comes to what I said; instead of 1.498, the charge is actually 1.5.

[fol. 2115] A. I couldn't get it any closer, without carrying out a lot of decimals.

Q. I know you can't; it is just a difference, as I stated originally, on account of the decimals; but when you are figuring 40,000 or 100,000 bushels it makes a little difference?

A. Very slight.

Q. Now, is Mechling's charge the same as Hay's, between the same points?

A. No.

Q. Is is higher or lower?

A. Slightly higher.

Q. From LaSalle, what is it?

A. 2¾ cents per hundred.

Q. He makes a per hundred charge, rather than a per bushel charge, does he?

A. Correct. Mechling names all of his rates in cents per hundred pounds.

Q. Does he make any different charge for lower quantities?

A. He never has to us.

Q. On your exhibit 67 you show that the barge mileage to Chicago is 57.7 miles; that is the first figure in the upper lefthand corner of the page. Do you see it there?

A. Yes, I see it.

Q. And in connection with these barge mileages you say in Note A, "Barge mileages measure from origin point to [fol. 2116] mouth of Illinois River, Michigan Avenue bridge." What do you mean by that?

A. Well, that is the measurement that the United States department of engineers tabulates for that distance. It is known as the U. S. light list. I understand, however,—I show that as of 1937—that there has been a revision in that light list.

Q. I am getting at Note-A first; I will get to the mileage later. The mouth of the Illinois River is around Joliet, is it not?

A. It shows it in this government book, the mouth of the Illinois river at the Michigan Avenue bridge.

Q. Michigan Avenue bridge in Joliet?

A. No.

Q. Where?

A. Chicago.

Q. You know the Illinois River does not run anywhere near Chicago, don't you?

A. The North Branch,——

Q. That is the Chicago River here?

A. I am not an expert on the technical parts of the river.

Q. The Chicago River flows into the Drainage Canal; the Drainage Canal is practically on the old location of the DesPlaines River as far as Joliet, and from there the Canal empties into the Illinois River; isn't that what it is?

A. I don't know, Mr. Day.

[fol. 2117] Q. Have you this pamphlet or document called the Official light list of the United States Department of Commerce with you?

A. I have not.

Q. And it reads from the origin point to the mouth of the Illinois River, Michigan Avenue bridge, does it?

A. I got these milages, Mr. Day, from the Federal Barge Line, who have this light list in their Office.

Q. Your grain goes to the Rock Island elevator; I think you said, the Rock Island Terminal elevator?

A. That is right.

By Exam. Taylor:

Q. In South Chicago?

By Mr. Day:

Q. South Chicago?

A. Right.

Q. On the Little Calumet River?

A. The Calumet River.

Q. It is the Little Calumet? The Grand Calumet flows over into Indiana, doesn't it?

A. All right; I will take your word for it.

Q. And these elevators are located close to Lake Michigan at South Chicago?

A. Our elevator is. Some of them are quite a distance away.

Q. Now, then, you say that this mileage you gave has

been revised since 1937; what is the figure shown by this revision to Michigan Avenue bridge as of today?

[fol. 2118] A. I don't know.

Q. Isn't it 63.7 miles?

A. I don't know.

Q. If that is the figure shown in the Port Hand Book, Sixth Edition of 1939, page 18, would you say that 63.7 was the correct mileage?

A. If it is shown in there, certainly.

Q. You heard Mr. Mechling, who operates barges to your South Chicago elevator, say that the distance was 68 miles to those elevators around South Chicago?

A. I did not hear Mr. Mechling's testimony.

Q. You have no reason to doubt the correctness of the figure he gave, have you?

Mr. Belnap: We will be very glad to accept it, Mr. Day.

The Witness: No, if that mileage is 68, and he said it is, I will accept it.

Mr. Belnap: I would accept it; it is rather immaterial.

Mr. Day: I don't know how material it is going to be; but we want to get it as nearly correct as we can now.

Mr. Belnap: I will be delighted to have it, sir.

By Mr. Day:

Q. The river has been frozen for some weeks now, hasn't it?

A. Yes.

Q. And the barge lines are not operating from LaSalle to Chicago, for instance?

[fol. 2119] A. Not from LaSalle.

Q. And the railroads are, I take it.

A. I guess they are.

Q. So when you say that the time made by the barge is less than the rail, you mean that in fair weather the time is better?

A. That is when the barges are operating.

Q. You show a through rail rate, on your exhibit 69, from Morris, Illinois, to Detroit, Michigan of 24½ cents; and elsewhere in your testimony you had stated that there was a rate of 22 cents to Detroit?

A. I beg your pardon, I didn't state that, Mr. Day.

Q. I don't say that you said it applied from Morris; but I was wondering if that 22-cent rate would apply from Morris?

A. No.

Q. What territory would that apply from?

A. Well, it applies from Peoria, Lacon; and there is any number of Alton and Illinois Central points.

Q. In any event Morris is intermediate from those points to Detroit?

A. Not necessarily, no.

Q. From Peoria?

A. They do not carry an intermediate clause from the origin points in that tariff.

Q. They have Fourth Section relief, haven't they?

[fol. 2120] A. I know this: that we are unable to bill out at a balance of the through rate to Detroit.

Q. The thing is, Morris is a local point on the Rock Island; and the Rock Island is the short line between Peoria and Chicago?

A. Yes, but there is a restriction in this tariff where the rates will not apply via the Rock Island.

Q. I could not reconcile your 24½ cent rate with the previous figure?

A. Made on the combination.

Q. Do the ex-lake rates shown on your exhibit 70 carry an expiration date?

A. Are you speaking now, Mr. Day, of those in the upper block, or those in the lower block?

Q. I was speaking of those in the upper block.

A. I am not definitely sure whether they do carry an expiration date.

Q. Looking at your exhibit 71, isn't it a fact that there are also all-water routes from Morris to these eastern destinations, as well as the barge-lake-rail and the rail-lake-rail routes?

A. All-water routes?

Q. Yes.

A. Not into Baltimore.

Q. Aren't there?

A. You could reach Baltimore via all-water; but there is [fol. 2121] no business, to my recollection, being done on that.

Q. You mean the grain is not carried that way, although the water route is available if they want to use it?

A. Yes, the water is available.

Q. And what is the all-water charge from Morris to New York that would correspond with the charges shown on your exhibit 71?

A. The all-water to New York?

Q. Yes.

A. I do not have an all-water——

Mr. Belnap: He asked you what it was, Mr. Schimmel?

By Mr. Day:

Q. Do you know what it is?

A. No, I do not.

Q. Do you use all-water routes from Morris or Chicago to New York?

A. No; we ordinarily will run our all-water movements through Montreal, Sorel, or Three Rivers.

Q. That is your export business?

A. It might be that our New York office might do some of that business from Buffalo, but I wouldn't know about that.

Q. But your export business is ordinarily handled through Montreal or Three Rivers?

A. Montreal, Sorel, or Three Rivers.

By Exam. Taylor:

Q. All on the St. Lawrence?

A. All on the St. Lawrence.

By Mr. Day:

Q. Do you use St. Lawrence?

[fol. 2122] A. Yes, occasionally we use St. Lawrence.

By Exam. Taylor:

Q. But that way would be lake-rail?

A. Lake-rail.

By Mr. Day:

Q. Lake and Canadian rail?

A. Rail, Canadian rail.

Q. Your exhibit 77 indicates the extent to which you use lake routes out of Chicago, does it not?

A. Yes, lake and also rail.

Q. These lake charges that you show on your exhibit 71, and which you said have been in effect during the last half of 1939, actually jumped to that figure when the war started, did they not?

A. Well, it was about that time. I think it was a little bit before the war was commenced that the iron ore people began to engage this vessel space and it caused a tight situation, and the rate went up.

Q. To this abnormally high amount?

A. Yes.

Q. Before the iron ore situation became acute the vessel charge was around 1¾ cents to Buffalo, was it not?

A. You mean immediately preceding the war?

Q. Yes.

A. It seems to me it was a little bit more than that, Mr. Day; although I couldn't state definitely.

Q. You stated on your direct that the lake charge had [fol. 2123] been as low as 1½ cents?

A. Yes.

Q. In recent years?

A. Yes.

By Exam. Taylor:

Q. Is that per bushel?

A. 1½ cents per bushel.

By Mr. Day:

Q. On exhibit 72 you show a charge from Duluth to Buffalo, all-rail of 47½ cents; now that would not be the charge that was really assessed on any grain out of Duluth, would it?

A. It would apply to grain direct into Duluth; that is the local rate.

Q. Bearing in mind you are talking about corn;—you know that when you are in Duluth you are a long way from the corn belt?

A. No, as a matter of fact, corn in Duluth would be probably ex-rail.

Q. Yes, it would move in from some corn-producing section like Iowa?

A. Northern Iowa and Minnesota.

Q. And it would stay a rail rate into Duluth; and then

carrying with your exhibit, Duluth to Chicago would pay the proportional fixed by the Commission in the Western Grain case to move to Chicago?

A. By rail?

[fol. 2124] Q. By rail.

A. Yes.

Q. That is the way the figure that I was talking about applies, 47½ cents all-rail from Duluth?

Mr. Belnap: As I understand it, Mr. Day, on the traffic which came into Duluth via rail, the rate Duluth to Buffalo, instead of being 37½ cents would be 34½ cents.

Mr. Day: Is that the witness' statement?

The Witness: Yes, that would be 34½ cents.

By Mr. Day:

Q. How would you make that up?

A. 13 cents, the factor from Duluth to Chicago; 21½ cents Chicago to Buffalo.

Q. 21½ cents beyond Chicago if it originated in the Northwest territory?

A. That is right.

Q. But if it originated in trans-Mississippi River territory, and was shipped through Duluth, it would take 3 cents less than Chicago?

A. Correct.

Exam. Taylor: That is, shipped all-rail?

Mr. Day: Yes. The figure I have been talking about all the way through on exhibit 72 has been an all-rail figure. Now, the corn shown on your exhibit 73 shipped from Duluth amounted to 93,301 bushels, in 1937; is that right, domestic lakewise shipments?

[fol. 2125] The Witness: Yes.

Mr. Belnap: Just a minute, Mr. Schimmel; the gentleman asked you about bushels.

The Witness: That is tons; 93,301 tons. I covered that in my direct, giving the amount of corn bushels to the ton.

By Mr. Day:

Q. And I think you said that went to the head of the lakes, and you meant in the vicinity of Buffalo or the lower Lake Erie ports.

A. I believe I did say head of the lakes, and I should have said Lake Erie ports.

Exam. Taylor: The record is corrected on that to the foot of the lakes.

By Mr. Day:

Q. You don't know just where it did go, do you?

A. No; it is classified as lakewise shipments.

Q. Included in that figure might have been some tonnage that moved via rail east of Buffalo?

A. Yes, sir; there could possibly have been some.

Q. Or by water on the St. Lawrence River east of there?

A. Perhaps.

Exam. Taylor: It would be on the St. Lawrence River east of there, so far as it was to a point in the United States, because it says it is domestic; it is not export. There is a place for export just above the figure you just gave.

By Mr. Day:

Q. Do you classify the consignment, for instance, to [fol. 2126] Montreal or Quebec as export?

A. Yes, I would.

Q. That is the way it is listed in the government circulars, and in the trade?

A. Yes, sir.

Q. Anything going in to Canada is regarded as export?

A. No; no, there is corn that moves into Canada that is on a coastwise manifest.

Q. There is a distinction between the grain that is shipped to Europe or Africa or some other foreign country, and the grain that goes to Canada for consumption there?

A. Yes; but the grain that goes on a coastwise manifest may go to Europe; it may be finally exported.

Q. But the Examiner's question was, would a car of corn going to Montreal be export?

Mr. Belnap: May I say something off the record——

By Mr. Day:

Q. You know, and we all know that Canada is not a corn-growing country; and they use corn there the same as they

do anywhere else. Now, as I understand the Examiner's question, is a shipment to Canada for consumption in Canada, is that classed as export?

A. No, it would not be.

Q. But if it is going to be shipped from Montreal to Great Britain or South Africa, it would be classed as export; isn't that the situation?

[fol. 2127] A. Surely.

Mr. Belnap: My suggestion was going to be that I believe the report of the Army Chief Engineer defines the term; I thought it would be helpful to the record if Mr. Schimmel would obtain that document and state in the record what the definition is, how that is used.

By Mr. Day:

Q. Now, Mr. Schimmel, you also read into the record the lake shipments for 1938 from those other points; isn't it a fact that in 1938 there was an unusually large movement from Duluth via lake, of export corn.

A. Yes, there was a large movement of corn. I would call 27,000,000 bushels large.

Q. That was practically all for export, was it not?

A. I would say so.

Q. You wouldn't know about that?

A. Well, I could say that some of this corn would reach Buffalo and be reshipped into New England and Trunk Line territory; it would not all go for export.

Q. From Duluth; the figures are available, however, are they not, showing the export from Duluth?

A. Oh, yes.

Q. 1938 was not only a large export of corn from Duluth, but from Chicago, Milwaukee, and a number of other points in Central Freight Association tariffs?

A. Yes; 1938 was a fairly good export corn year.

[fol. 2128] Q. And 1939 was a year of large exports of corn, wasn't it?

A. Not so large.

Q. Smaller than 1938?

A. Yes; we are talking about the fiscal year now, now a crop year.

Q. I am talking about the calendar year.

A. The calendar year, yes, that is right.

By Exam. Taylor:

Q. And that is what your exhibit refers to, is the calendar year?

A. Yes, calendar year.

By Mr. Day:

Q. You, in giving these figures for 1938, said that they were taken from the records of the Duluth Grain Exchange, or some such trade body up there; would the figures of that exchange correspond with the figures—would the figures for 1934, 1935, 1936, and 1937 correspond with the figures shown on your exhibit 73? Have you ever matched them up to show that they are the same?

A. I do not believe I show on my exhibits for the years 1938 and 1939.

Q. I didn't mention those; I said are the cost figures for 1934, 1935, 1936 and 1937 the same as the figures you show on your exhibit 73? Off the record.

(Discussion outside of the record.)

A. Yes, approximately the same.

By Mr. Day:

Q. In your exhibit 76 you show rates from what we or- [fol. 2129] dinarily regard as coal-producing sections on the Chicago & Eastern Illinois, the Milwaukee, and the Illinois Central in Indiana.

A. That is right.

Q. Isn't it true those are the coal-producing sections in Indiana?

A. Well, I don't know about the coal, Mr. Day; I know there are substantial quantities of grain that move. Some of those points I recognize as being quite large shippers.

Q. I notice the points are not listed in any kind of geographical order; is this the way they appear in the tariff?

A. There were more stations than I had shown in this exhibit, and I took up some representative points that I recognized I had received grain from, and showed them on the exhibit. There isn't any other stations that have the same applications of rates to the lake proportional, out on the lake.

Q. They would not apply, for instance, at Terre Haute?

A. I don't believe that Terre Haute was included in there.

Q. Does the Chicago & Eastern Illinois tariff, for instance, carry an intermediate clause?

A. Yes; and I am quite sure they have Fourth Section relief.

Q. Well, they wouldn't need Fourth Section relief if they had an intermediate clause, would they?

A. I know that the rates are not applicable. I cannot answer that question; but they are not applicable. From [fol. 2130] these intermediate stations, I know that the rates do not apply.

Q. They would not be applicable from such actual grain-producing sections, corn-producing sections as that around Hoopeston, or Milford, or Watseka?

A. No, they would not apply.

Q. They only apply from that territory south of Terre Haute?

A. That is the general description.

Q. South of Terre Haute on the Milwaukee—on your exhibit 77, could you tell us how many of the 501 cars via rail shown on the first sheet moved out at what you call the lake local rates?

A. I do not follow you, Mr. Day; that is under the even rate, or the Illinois proportional, the 500 cars.

Q. So none of that would be——

A. No.

Q. The lake local would be shown in the next——

A. The next block.

Q. And where you show 2210 cars, via barge, you meant that as an equivalent, and not that it was actually carload traffic?

A. No, I show the tonnage there; 187 million and some odd pounds; and I used 84,638 pounds per car to arrive at the amount of cars equivalent. That was the figure that Mr. Tannehill used.

Q. Have you any idea where these 501 cars via rail, be-[fol. 2131] ing the even rate or Illinois proportional rate, actually originate?

A. Yes; quite a number of them originated on the Illinois Central, around Beason, Skelton, Havana; and quite a number of them on the Chicago & Eastern Illinois in Indiana.

Q. Didn't any of them originate on the main line of the Illinois Central running south from Chicago?

A. Perhaps.

Q. You don't know about that?

A. Oh, there would naturally be a few cars in there; maybe quite a number.

Q. That section served by the Illinois Central is one of the finest corn-growing sections in Illinois, is it?

A. Well, I don't know; it is pretty good territory out here along the Illinois river.

Q. And this Illinois Central territory is not so good for corn?

A. Oh, it is good producing.

Q. That is all I asked you, if it was not one of the finest.

A. I don't know that it is one of the finest.

Q. You don't know?

A. There is other territory that has massive production also.

Q. There is a lot of corn grown in Champaign County?

A. There is a lot of corn grown in LaSalle County.

Q. You have seen better corn there, have you, along the river valley that is overflowed a good deal of the year, have you?

A. I have not seen any overflow down there.

[fol. 2132] Q. You have not? You have been down in that country, have you?

A. Yes, I have.

Q. I have too; and I have seen it under water a lot of times. If the figures show that the Illinois Central is the largest corn-producing railroad in Illinois, would you still stand with your answer that it did not amount to so much as a corn producer?

A. Well, we would have to compare territory to consider that.

Q. You would have to compare territory?

A. Yes, the farming territory, Mr. Day. I pick out a little spot, and it is a natural thing that along these river valleys is where your massive production of corn is. Farther away from the rivers, sure, there can be good production.

Q. I suggest to you you look at McLean County production, compared with the rest of the state, and see if there is

any that has a larger production; that is the same distance from the river, is it?

A. I don't know where McLean County is.

Q. Bloomington is the county seat. Now, supposing in connection with your comparison of coal rates that if coal was dumped at Cleveland into a boat at the railroad docks there, for vessel consumption, do you know what rate it would pay?

A. No, I do not.

Q. Do you understand it would take a lake cargo rate?

A. I don't know about Cleveland.

[fol. 2133] Q. Well, any point; I just took Cleveland. You can take Erie, Ashtabula, Sandusky, or Toledo.

A. If it moves, I don't know about consumption by vessel.

Mr. Belnap: That is all he asked you, Mr. Schimmel.

The Witness: All right.

By Mr. Day:

Q. You don't know what rate it would take?

A. No.

Q. Who supplied you with these coal rates?

A. I looked up some of them myself; most of them, with the Illinois Coal Traffic Bureau, 307 North Michigan.

Q. You got them from the Illinois Coal Traffic Bureau? Could you give us any information as to the destinations of your outbound shipments shown on your exhibit 77?

Mr. Belnap: Do you want the complete total, or just representative.

Mr. Day: Have you got the complete total?

Mr. Belnap: He must have, in his office some place; it is quite a volume of business.

Mr. Day: I want the best information he can give me.

The Witness: Do you want the even rate, lake local and barge, or just the barge?

By Mr. Day:

Q. Well, give it to us by the barge, if you have got it there.

A. The majority of that, and the large percentage, rather, moved out by rail to the Atlantic Seaboard.

[fol. 2134] Q. That is what is shown via rail?

A. 17,384,610 pounds; the majority of that went to the Atlantic Seaboard.

Q. Recently?

A. A large percentage, yes.

Q. For export?

A. For export.

Q. And what about that via lake; was most of that for export too?

A. Well, not so much of it; not as large a percentage as of the other. There was some export and some domestic.

Q. What percent would you say for export, approximately?

A. I don't believe I would want to make a guess.

Q. Would you say whether it was half or more?

A. No.

Q. I do not observe anywhere in your figures that any of your grain was consumed locally in Chicago; did you have any such grain?

A. No grain by——

Q. Everything you haul is shipped out?

A. Grain in and grain out, outside of the cancellation account quarterly adjustment; that billing was canceled, probably as house shrink loss.

Q. But you do not sell to any of these large consumers around Chicago, like Corn Products Refining Company, or [fol. 2135] American Maize Products?

A. Yes.

Q. Wouldn't that enter into this local consumption?

A. During this period we have not sold them any grain.

Q. That is what I am getting at; none of this grain shown on your exhibit was for local consumption?

A. No.

Q. So that it is fair to assume that practically all of your business is through business; you get it into Chicago, and you ship it out?

A. Well, a good percentage of it, yes; but I do not consider when we ship these grain cars across town to American Maize or any of these large consumers that it is all locals; they operate on through rates too, you know.

Q. Do you take into account that they might move it beyond Chicago on some through rate?

A. I do not take that particularly into account; that is their business.

Q. Then, if you did sell to Corn Products, for instance, it would be shown here under the head of cancellation, would it not, so far as you are concerned?

A. No; I would probably have made another heading in there and showed that across town to industries.

Q. But so far as your exhibit goes, there is none of that business shown?

[fol. 2136] A. No.

Q. Is this a representative business for that period, May 1 to November 30th, 1939?

A. Why, fairly so.

Q. There is nothing unusual or extraordinary about the handling of your business, then?

A. No.

Mr. Day: That is all.

Exam. Taylor: Recess for five minutes.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. Mr. Day, you concluded your cross-examination?

Mr. Day: Yes.

Mr. Enoch: I overlooked a question.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Schimmel, isn't it true that of all the grain brought into Chicago by barge 90 per cent or more is towed in by Mechling?

A. I couldn't say as to that per cent, Mr. Enoch.

Q. You do know that by far the greater portion of all of that barge grain is towed in by Mechling, don't you?

A. Yes, I would say the greater portion.

Q. Now, on your exhibit 67, the second page, you mention a Barry barge line; that barge line did not handle any corn to you, did it?

[fol. 2137] Mr. Belnap: You mean Continental Grain Company?

Mr. Enoch: Yes.

The Witness: No; they were in towing service; they had done some towing.

By Mr. Enoch:

Q. For whom?

A. They have towed for Hay.

Q. So far as you know, they never have barged any grain in their own right?

A. Oh, yes, they have.

Q. In 1939?

A. Not in 1939.

Q. Well, so far as you know, they never barged any grain in their own right in the year 1939?

A. No.

Mr. Enoch: That is all.

Exam. Taylor: Mr. Brown, any questions?

Mr. Brown: No.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. You mentioned that the river has been frozen up the past two weeks?

A. Yes.

Q. Do you know whether or not any grain is being received from Morris, Illinois, by way of the river during the past two weeks?

A. Yes, they have been coming in from Morris with barges in the last two weeks.

[fol. 2138] Q. In other words it is frozen beyond, south of Morris; is that right,—south and west?

A. I understand it is frozen around Marseilles. That is a little southwest of Morris.

Q. And that, then, makes it impossible for your shipments from LaSalle, those being the ones we referred to, to come through for a couple of weeks?

A. Yes.

Q. Referring to your exhibit 75, under Duluth and Superior to New York, domestic, you show a 39-cent rate; do you know whether that is a joint through rate?

Exam. Taylor: That is in the last column, under all-rail.

The Witness: Yes, that is a joint through rate.

By Mr. Macaulay:

Q. Do you know whether any grain is shipped out of Chicago to either Central Freight Association territory or to Trunk Line territory on the local rates?

A. None, to my recollection.

Q. It all goes out under the reshipping or proportional rates; is that correct, that you know of?

A. From Illinois.

Q. No, from Chicago?

A. From Chicago?

Q. Yes; all grain leaving Chicago, that you have knowledge of, leaves Chicago on either the proportional or the [fol. 2139] reshipping rates; is that correct?

A. No——

Q. Well, if it does not go out by local, how does it go out?

A. It goes out on either trans-Mississippi, Northwest, or reshipping; or in a case of the proportional or reshipping rate to the Eastern territory.

Mr. Belnap: Would you add to that also on the balance of the through rates which are lower than either the reshipping or the proportional rates?

The Witness: Yes, sir.

Mr. Belnap: I think Mr. Macaulay's question was whether any grain was ever shipped out of Chicago at all on the local rates.

Mr. Macaulay: He answered that, Mr. Belnap.

The Witness: I answered that.

Mr. Enoch: You mean at no time?

The Witness: To my recollection, Mr. Enoch, I have never billed any shipments out of Chicago on the local rates. There is one exception, however, to Decatur, Illinois; going back to Decatur, however, when the movement to Decatur is finally tied up with the origin on the grain. Decatur has used that reshipping or proportional rate to eastern territory, and they have a route via Decatur, connecting lines reaching Eastern Trunk Line.

Mr. Belnap: That is, a route from Chicago via Decatur?

[fol. 2140] The Witness: Yes, sir.

By Mr. Macaulay:

Q. Have you ever applied the Northwest application to any grain arriving in Chicago via lake from other than the upper lake ports?

Exam. Taylor: You mean, for example, Milwaukee or Green Bay?

Br. Mr. Macaulay:

Q. For example, Montreal, or possibly Buffalo.

Exam. Taylor: Via Chicago?

Mr. Macaulay: Via Chicago, yes.

The Witness: During the drought years, when they imported Argentine corn, we used ex-lake applications from Chicago northwest rating.

By Mr. Macaulay:

Q. When was the first shipment that you have knowledge of arriving at Chicago by barge, that was billed out under tariff 245 or 535?

A. I couldn't give you the date; but it is probably sometime during 1935.

Q. Do you know whether or not there was any barge grain arrived before 1935 that may have received that application?

A. I don't know as to that.

Q. Referring to exhibit 77, you were asked the disposition of the 162,000,000 pounds of grain outbound via lake; and you stated that not all of it was for export. Did some of that grain go to Buffalo for trans-shipment via rail to [fol. 2141] points east?

A. It did.

Q. Did a substantial amount of that grain go that way?

A. Yes.

Q. Would you say that one-half, or more went that way?

A. I previously stated, Mr. Macaulay, I wouldn't want to make a guess. It would just be purely a wild speculation for me to guess it.

Q. But a substantial amount, you are sure, was transshipped via rail from Buffalo?

A. Yes.

Q. Is there any navigable water course from Buffalo to New York via which grain can be transported from Buffalo to New York?

A. Yes, over what is known as the New York state canal.

Q. Do you know whether grain is actually transported that way?

A. I understand that it is, yes.

Q. You don't know what the rate is from Buffalo to New York, though, do you?

A. No.

Mr. Macaulay: That is all.

Exam. Taylor: Any other cross-examination of this witness? (No response.) Is there any redirect?

Mr. Belnap: Yes, I have some questions.

Redirect examination.

[fol. 2142] By Mr. Belnap:

Q. You mentioned that some of the grain brought in on these lake local rates was subsequently reshipped under transit to Battle Creek; is Battle Creek one of the most important consuming points for grain in the Central territory?

A. For corn.

Q. How could you reship that lake local corn, Mr. Schimmel, inasmuch as the tariffs of the Western Lines published the local rates into Chicago provided that transit will not be applicable in connection therewith; just tell us what you do.

A. I go back to the point of origin of my inbound billing, pick up my through to Battle Creek, deducting what has already been paid in to Chicago to arrive at the balance out rate from Chicago. I might add that in some instances the lake local rate is within a cent, half a cent of the interstate rate.

Q. I would like to have you give it a little more detail, Mr. Schimmel: you get a shipment in on a lake local; you register that bill with the Inspection Bureau, do you?

A. Yes, it is registered.

Q. Now, when you want to ship that grain out,—let us first assume the grain came in from Peoria;—that is beyond the lake local territory, isn't it?

A. Oh, yes.

Q. Say from LaSalle, it came in on the lake local rate; that corn would pay 9 cents into Chicago under your exhibit 67?

[fol. 2143] A. That is right.

Q. You register that bill with the Inspection Bureau; then, when you want to reship that grain, what do you actually do? You said, pick up; I want the physical operations.

A. That inbound bill from LaSalle is tendered to the Central Inspection Bureau, and they show the inbound rate to Chicago of 9 cents, through rate, 19 cents, balance out, 10 cents; and the difference between the lake local and the interstate rate to Chicago is made in an adjustment between the eastbound and westbound carrier.

Q. As far as you are concerned, you simply surrender the bill and get a balance out of 10 cents?

A. That is correct. I do not have to pad the rate myself.
Q. So you do get transit on a lake local bill?
A. I do.

Mr. Enoch: Intrastate.
Mr. Belnap: I don't think I get your point; would you develop what you are thinking about?
Mr. Enoch: I would like to know if you get the balance of an interstate rate, by surrendering an intrastate bill.
The Witness: Yes, I get the balance.

By Mr. Enoch:

Q. Joint one-factor rate from LaSalle to Battle Creek?
A. Yes.
Q. You pay an intrastate rate to Chicago; three months [fol. 2144] later you pay the balance of the interstate rate to Battle Creek, when you ship outbound?
A. Through rate; one-factor through rate is an interstate.

By Mr. Belnap:

Q. You do, Mr. Schimmel, in answer to Mr. Enoch's question, surrender a bill representing an intrastate movement and obtain the balance of the through interstate rate to Battle Creek?
A. Yes, sir.
Q. And that balance, that situation is 10 cents?
A. Correct.

Mr. Enoch: May I interrupt you to say, are you going to cite the tariff authority for that application?

By Mr. Belnap:

Q. What is the tariff authority for that?
A. I think I can give it to you.
Q. Did you look for the tariff authority for the joint through rate?
A. Yes; it is Agent L. E. Kipp's Western Trunk Line 68-N; I don't know the ICC number.
Q. The joint through rate is in that tariff?
A. Yes.

Mr. Enoch: Oh, I am talking about the provision that authorizes the application of a transit balance to measure the outbound charge in such a situation.

By Exam. Taylor:

Q. Well, Mr. Witness, does that tariff refer to a transit tariff—and if it refers to a transit tariff do you apply all [fol. 2145] of the rules in that transit tariff?

Mr. Belnap: All those which are applicable, you would mean?

Exam. Taylor: Yes.

Mr. Belnap: There are two questions there; would you answer the first one, so we may be straight on the record: is Kipp's tariff made subject, either by specific provision or by omnibus clause, to tariffs on file with the Interstate Commerce Commission?

A. Omnibus clause, I think.

Q. It is made so subject by an omnibus clause?

A. Yes.

Q. And the other question is when you apply this billing as you have described, do you comply with the rules in the transit tariff which are applicable to that transaction?

A. Yes, that is correct.

Q. In that particular situation, as a practical matter, however, Mr. Schimmel, do you not go out the same as if you had readjusted the inbound charges to the basis of the interstate local from LaSalle to Chicago, and then take the balance of the through rate in consideration of having paid that inbound local?

A. Yes.

Q. Tell about the mechanics of it, how it figures that way.

A. In the instance where we would use this LaSalle bill, [fol. 2146] that has paid in a 9-cent local rate. If we elect to bill out at the divisions, rather than at the through rate, then the inspection bureau will show the interstate LaSalle rate to Chicago of 12 cents, and bill the shipment at 7 cents.

Q. That is a balance, is it not?

A. Balance of 7 cents; then the inspection bureau notifies the westbound carrier of this particular——

By Exam. Taylor:

Q. The western carrier?

A. The Central Inspection Bureau——

Q. You said, notifies the westbound carrier.

A. Notifies the western carrier.

Q. The western line?

A. The western line,—to bill on the shipper for the difference between the interstate and the lake local rate, which would be 3 cents.

By Mr. Belnap:

Q. Do you sometimes handle it that way?

A. Yes, sir; we have.

Q. Do you sometimes handle it by just submitting a 9-cent bill and asking it to go out on a 10-cent balance?

A. Yes.

Q. In either event, isn't this what has happened: you paid the 7 cents balance, considering interstate rates only, plus 3 cents?

A. Yes, that is correct.

Q. That 3 cents being the difference between the lake local [fol. 2147] and interstate to Chicago?

A. That is correct.

Mr. Brown: He has paid a through interstate rate from the point of origin to final destination.

By Mr. Belnap:

Q. When the transaction is all completed?

A. That is right.

Q. What is the Northwest proportional from Chicago to Battle Creek?

A. I think it is 15 or 16 cents; I am not quite sure of that. The Northwest is 14½ cents; this is June 30th, 1939, issue.

Q. So in that situation does your lake local tonnage have a much better opportunity of getting out of Chicago than your ex-barge tonnage?

A. Yes, very much so.

Q. To the extent of the difference between 10 cents and 14½ cents?

A. That is correct.

Exam. Taylor: Now, you are commencing to talk about barge shipments, when you were talking about lake locals. The lake local is a rail rate, as I understand, not a barge rate.

Mr. Belnap: That is right; and I was asking in this last question, Mr. Examiner, to compare the opportunities with the respective tonnages, grain coming in via rail on the

lake local on the one hand with grain coming in via barge [fol. 2148] on the other hand, insofar as Battle Creek is concerned.

Exam. Taylor: All right.

By Mr. Belnap:

Q. You understood the question that way, did you, Mr. Schimmel?

A. Yes, I did.

Mr. Belnap: His answer is that the lake local has a better opportunity of getting him there, to the extent of 4½ cents, considering LaSalle as an origin. Mr. Schimmel, is that situation just described true as to other Central Freight Association destinations, where you have joint through rates which are less than the Chicago combination?

The Witness: Yes, it is.

Mr. Enoch: I would like to know where that has been done, and if he has made shipments.

By Mr. Belnap:

Q. Have you made shipments under a situation we have talked about to Battle Creek?

A. Yes, I have.

By Exam. Taylor:

Q. Which situation?

Mr. Belnap: Lake local tonnage reshipped to Battle Creek on the balance of the interstate through rate.

The Witness: Yes, that is correct.

By Mr. Belnap:

Q. And have you done that in preference to reshipping ex-barge tonnage to Battle Creek?

A. Certainly.

Q. You mentioned some oral agreement you had with [fol. 2149] John I. Hay Company as to the service rendered by that company to Continental; I think you just referred to it in general terms. Can you tell us the character of the agreement, both so far as the obligations of the Continental are concerned, and the obligations of John I. Hay Company are concerned?

A. Well, so far as the Continental Grain Company are concerned, they only agree to pay him for whatever barges he hauls in; and his only obligation to us is furnishing us barges when we call for them and transport in for us at the rate he sets out to haul for.

Q. Have you any contract with him whereby it will be a breach of that contract if the next time you ask him to place a barge he names a rate different——

A. No, there wouldn't be any contract; there is no contract or breach. We can quit each other any time we want to.

Q. Do you have any obligation to deliver any specified amount of tonage to John I. Hay Company?

A. No, sir; none whatsoever.

Q. Or have you any agreement that you must deliver your tonnage to him?

A. None, no.

Q. You do use A. L. Mechling Barge Line, do you not, from the same points which John I. Hay is hauling for you?

A. We do.

By Exam. Taylor:

Q. Right while you are on that line,—is there anything [fol. 2150] in this record to show what the rate to LaSalle or Morris, or any of these points is by way of the John I. Hay Company to South Chicago—you have a verbal agreement with them; it has not been stated the amount of the rate yet.

A. That is 1½ cents a bushel, or 2.675 cents a hundred, is what he sets out to haul grain for.

By Mr. Belnap:

Q. That is from LaSalle only?

A. From LaSalle.

Q. Does your exhibit 67, taking the stations Ottowa and south, show the rates which the John I. Hay Company holds itself out as willing to transport for to the Continental Grain Company?

Mr. Enoch: Object; there isn't anything on this exhibit that shows the John I. Hay Company holds itself out to haul for anybody.

Mr. Belnap: I asked him whether those are the rates which John I. Hay Company holds itself out to haul for Continental for.

The Witness: Yes.

Mr. Enoch: Object to that, and move the answer be stricken. It calls for the conclusion of the witness. The purpose of this is to establish a certain status for the barge operation; and there wasn't anything on direct or cross of which I am aware or now recall, that had to do with the status of the John I. Hay Company, or any effort to show [fol. 2151] by the protestants here what the status of that operator was.

Mr. Belnap: The Examiner asked if we would identify the rates we were talking about. That is the purpose of my question, and the reason I ask Mr. Schimmel to answer it.

Exam. Taylor: What I wanted was the rates, Mr. Enoch that were charged by John I. Hay Company; and I found that they are the rates that are named in the second column of figures in exhibit 67.

Mr. Belnap: Except I do not include Morris and Seneca in that question of the witness, Mr. Examiner, because the record already shows that the charges there shown for barge transportation are those named by the Allied Barge Corporation.

Mr. Enoch: John I. Hay Company hasn't any rate, as a matter of fact, according to Mr. Schimmel's testimony.

By Mr. Belnap:

Q. Did you say that, Mr. Schimmel?

A. No, I didn't say that.

Q. Don't you pay a rate when John I. Hay Company transports for you?

A. They are in evidence; the exhibit shows we paid 1½ cents.

Q. That is from LaSalle only?

A. From LaSalle.

Q. That is, 1½ cents a bushel?

A. That is correct.

By Exam. Taylor:

Q. That is a verbal agreement?

[fol. 2152] A. It is.

Q. No publication of that?
A. He just sets himself out to haul for that amount.

Mr. Belnap: That is all I have on redirect.
Exam. Taylor: Does the redirect bring out any recross?

Recross-examination.

By Mr. Enoch:

Q. To what other points than Battle Creek have you been paying this balance for an outbound haul when the inbound grain has been on an intrastate rate?
A. The lake local—I believe, Mr. Enoch, Battle Creek is the only particular point that I have used that billing to. However, it would apply to other points.
Q. What other points?
A. Toledo, Detroit.
Q. Many of them?
A. Well, there is quite a number of them up in Michigan; there would be any number up in that territory;—Ohio; wherever there is through one-factor rates.
Q. If you follow that practice, this effort of the inbound lines to present transit when grain moves into Chicago on a low intrastate rate is without any success whatever, itn't it?
A. I wouldn't say that.
Q. What you do is take a shipment which is obviously an intrastate shipment, such as the shipment from LaSalle to Chicago, which has paid an intrastate rate, and three months [fol. 2153] or six months after its arrival, you convert that into an interstate shipment from LaSalle to Chicago to Battle Creek; that is the effect of it, isn't it?
A. Yes, we take advantage of the one-factor through rate.
Q. Although the prior movement inbound has for three months been intrastate?
A. Well, if it was that time, yes.

Mr. Brown: Mr. Enoch, it would be intrastate even if he paid the 12-cent rate, as far as the transportation is concerned?
Mr. Enoch: The same thing would apply.

By Mr. Brown:

Q. Supposing you didn't have this 9-cent local rate, then the only rate you have got to Chicago is 12 cents?

Mr. Day: But he is entitled to the lower rate of the two, and that is the applicable rate?

Mr. Brown: Surely; he is not transiting on the lake local rate; he is transiting on the through rate to Battle Creek.

Mr. Enoch: He is using an intrastate shipment.

Mr. Day: He is paying on the intrastate basis in the first instance, as I understand.

By Mr. Enoch:

Q. What character of corn do you use to Battle Creek?

A. White corn.

[fol. 2154] Q. Do you get any white corn from the barges down at LaSalle?

A. Yes, some.

Q. And what did you mean when you said some; it is all yellow corn, you mean?

A. We get yellow corn; we get yellow corn and white corn.

Q. How much white corn have you got by barge from LaSalle?

A. I don't know how much white corn versus yellow corn, proportionately, that we receive. I do not have those statistics; we could probably dig them up. It would be an enormous task.

Q. Did you get any white corn by barge in the year 1939?

A. Yes.

Mr. Enoch: That is all.

By Mr. Day:

Q. Where did it come from?

A. The white corn?

Q. Yes.

A. Some from Morris, some from Seneca, some from LaSalle.

Q. Was it raised in the vicinity of those stations?

A. Yes.

Q. To whom do you sell in Battle Creek?

A. The Kellogg Company, Post, General Foods.

Q. You do not sell to General Foods, do you?

A. We have.

Q. Don't they ship their corn grits from Kankakee?

A. I understand most of their operation is now at Kankakee.

Q. As a matter of fact, isn't all of it at Kankakee?
[fol. 2155] A. I don't know.
Q. And hasn't it been for several years past at Kankakee?
A. We have shipped corn direct to Battle Creek prior to this.
Q. To General Foods?
A. To General Foods, yes.
Q. Now, if the General Traffic Manager of General Foods testified within the last couple of months that he had not received corn from any other sources, except his own plant at Kankakee, would you disagree with that testimony?
A. Just what years are you going back to now? I have said I have shipped corn to the General Foods, white corn.
Q. You have not shipped any since they built their plant at Kankakee a couple of years ago?
A. No.

Mr. Belnap: The last two years you say you have not?
The Witness: Well, I do not recall just the date that this plant was built at Kankakee, approximately two years ago.
Q. Do you know where General Foods white corn is grown in Illinois?
A. Where General Foods white corn is grown?
Q. Yes.
A. You mean the corn that they purchase?
Q. The corn that they use in the making of their corn flakes and other cereals?
[fol. 2156] A. No, I don't know.

Mr. Day: That is all.
Exam. Taylor: Mr. Cole?

By Mr. Cole:

Q. Mr. Schimmel, what was the through rate, rail, from LaSalle, Illinois, to Battle Creek, Michigan?
A. 19 cents.
Q. And what was the ex-Northwest proportional from Chicago to Battle Creek?
A. 14½ cents.
Q. And I understand that John I. Hay Company charges you 2.675 cents on the boat to haul it from LaSalle to Chicago?
A. Yes.

Q. Then, on movement from LaSalle, Illinois, up the river to Chicago, and thence rail from Chicago on the Northwest proportional would make a total charge of 17.175 cents; that is, adding the water charge to the rail charge beyond Chicago; is that correct?

A. In my exhibit I would show it a little different than that, Mr. Cole; I would add .625 for trimming at Chicago.

Q. .625 for trimming at Chicago; that makes 17.8. Now, the rail comparison that you made would still leave the rail shipper to get the benefit out of any transit out of Chicago the necessity of paying that 19 cents from LaSalle to Battle Creek, would it not?

Mr. Belnap: The rail shipper from where, Mr. Cole?

[fol. 2157] Mr. Cole: From LaSalle.

The Witness: Which gets the 19-cent rate?

By Mr. Cole:

Q. Yes.

A. Yes.

Q. So that the water transportation up to Chicago, and rail beyond, is still 1.2 cents under the cost of the rail shipper shipping under the through rate from LaSalle to Battle Creek, is it not?

A. That is correct.

Q. Then why did you make a comparison with the transit balance that was applicable to the rail shipper; do you still say that instead of the application of the 14½ cent ex-Northwest proportional that there would be any question of the water shipper who shipped it up the waterway to Chicago then securing the application beyond Chicago on the transit balance that would be applicable to the rail shipper, the 10-cent transit balance?

A. Well, I do not pay the rail freight up to Chicago on my lake local shipment from LaSalle; we buy that grain delivered Chicago.

Q. And do you buy that grain delivered Chicago for the same price that you buy your river grain delivered Chicago?

A. Yes.

Mr. Cole: I see; thank you.

Mr. Belnap: In other words, there is no rail shipper cut of LaSalle to Battle Creek?

[fol. 2158] The Witness: No.

By Mr. Cole:

Q. Well, then, Mr. Schimmel, if there is no rail shipper from LaSalle to Battle Creek, for what purpose did you compare the transit balance, only that portion of it from Chicago over to Battle Creek, with the ex-Northwest proportional?

A. Because it resulted in a cheaper balance.

Q. Then, you still think that you should pay the same value for your grain delivered in Chicago ex-rail as ex-river; and you told me you did?

A. That is right.

Q. And secure the benefits of the rail transit balance beyond Chicago to Battle Creek, whether it comes in by water or comes in by rail?

A. Mr. Belnap: He didn't say that; he didn't say he wanted transit on his ex-water grain.

Mr. Cole: I said he wanted the application of the same level beyond Chicago as the level of the transit——

Mr. Belnap: He didn't say that.

By Mr. Cole:

Q. Do you want that?

A. I am not asking for any change in rates.

Mr. Cole: That is all.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Was any of the grain that you referred to as coming in on intrastate brought in over the Rock Island from La-[fol. 2159] Salle under their tariff No. 34560-B?

A. I don't know, Mr. Macaulay; I cannot remember all these freight bills.

Q. Was there any of it brought in over the Rock Island?

A. Yes, there is Rock Island shipments come in occasionally.

Q. Is the practice you referred to, of registering your intrastate billing with the Central Weighing and Inspection Bureau and then applying that on the through rate to Battle Creek approved and recognized by the Central Weighing and Inspection Bureau?

A. They rate the billing; I don't know that their authority would mean anything. It would be legal interpretation

from there on, what the carriers say their tariff will do, and the legal provisions thereof. The inspection bureau are not the last word on these rates.

Q. I say they are the ones that police the billing?

A. They police it, yes.

Q. And they have recognized that billing, and have allowed it to apply along the lines you mentioned?

A. Yes.

Q. Are you sure that the Chicago price on ex-intrastate rail is the same as the ex-river?

A. Grain has an intrinsic worth at Chicago. No. 2 yellow corn is worth the same price; there is a bid; it is competitive.

Q. Is that true, irrespective of the billing that it comes [fol. 2160] in on?

A. There is some premium billing, if that is what you mean, in the market at times; traders pay a little bit more for it. I am not so well acquainted with that feature of the trading; I would rather not go into this market end of it.

Q. When you mentioned that ex-river and ex-rail would bear the same price, that is not based on a full knowledge of the subject; that will be developed later?

A. I was only referring to the intrinsic value; for instance, No. 2 yellow corn at Chicago. That has a set price from day to day on the Chicago board. There are slight variations, sure.

Q. You know of no variation because of lake billing as compared to Illinois proportional billing?

A. At times there has been, yes.

Q. And which bears the higher price, the Illinois proportional or the lake billing?

Mr. Cole: Mr. Macaulay is putting propositions in his questions that have not been developed from the witness. There is no foundation for his last question.

Mr. Macaulay: I was cross-examining him on the statement that he made that ex-rail and ex-river grain pay the same price in Chicago; and I am asking the foundation for his answer, the basis for his answer.

Mr. Day: Why don't you put your own witness on to contradict it?

[fol. 2161] Exam. Taylor: Off the record:

(Discussion outside of the record.)

By Mr. Macaulay:

Q. Are you the man for Continental who buys the grain?
A. No.
Q. Will there be a man for Continental that can tell us if there is a distinction?
A. Mr. McClintock will testify.

Mr. Macaulay: That is all.

By Mr. Day:

Q. Did you say you were selling corn to Kellogg at Battle Creek?
A. Yes.
Q. How long since you have sold him any?
A. Oh, we have sold him rather recently, Mr. Day. I think we had some shipments over there in November or December. And finally, I believe we had a small lot go there in January.
Q. From where?
A. From Chicago.
Q. There was grain shipped out of Chicago,—do you know where it came from?
A. No; central Illinois, and Chicago and eastern Illinois territory in Indiana.
Q. And that was corn, not corn grits?
A. Whole corn.
Q. Does Kellogg make its own grits?
[fol. 2162] A. Yes.

Mr. Day: That is all.
Exam. Taylor: Anything further?
Mr. Belnap: Yes, I have one question.

Redirect examination.

By Mr. Belnap:

Q. Mr. Schimmel, I show you Mr. Sperry's exhibit 13, which shows the interstate and the intrastate locals to Chicago from various lines in Illinois; referring to page 15 it shows stations on the Illinois Central in lake local territory. Take stations, oh, near the bottom one, Flanagan, where the interstate local to Chicago is 12 cents, the lake local is 11; Graymont, where your lake local is 12 and the intrastate local is 10; what is the through single factor

interstate rate on corn from those stations to Battle Creek?

A. 19 cents.

Q. Does that rate apply from those stations to Chicago, and back to Kankakee, and then to Battle Creek?

A. Yes.

Mr. Day: You mean a backhaul movement of that kind?

The Witness: Yes.

By Mr. Day:

Q. Did I understand you, you mean that this traffic would move up through Kankakee to Chicago, and then move back through Kankakee and thence to Battle Creek on a rate of 19 cents?

A. Yes.

[fol. 2163] With no charge for that backhaul?

A. No charge whatsoever.

Q. Did you give the tariff reference?

Mr. Belnap: The tariff reference, I assume, is in Mr. Sperry's exhibit.

Mr. Cole: Not the 19 cents.

By Mr. Belnap:

Q. What is the tariff reference to that 19 cent rate?

A. In Agent Kipp's tariff 68-N; we are still short the ICC number.

Q. As far as the route is concerned, do you know what that route if from origin to Chicago, and then back to Kankakee; do you recall what it is?

A. Illinois Central to Chicago, New York Central to Kankakee.

Mr. Day: You do not get the New York Central into any route like that; it goes out of here New York Central but it does not go back to Kankakee going there; that is my point. You say that Kipp's tariff contains authority for the backhaul movement of about 120 miles?

The Witness: The Illinois Central tariff provides for the movement into Kankakee, and then it hooks up with the through interstate rate from the point of origin to Battle Creek; and the routing is permissible via Kankakee.

Mr. Day: You are sure of that?

The Witness: Yes.

Mr. Day: What is the number of that tariff?
[fol. 2164] A. Kipp's 68-N.

By Mr. Belnap:

Q. Take from the Alton Railroad, shown on page 2 of Sperry's exhibit 13, and down at stations LaRose and Washburn from whence we had some shipments in this case; do those points take the 19-cent rate to Battle Creek?
A. They do.
Q. Does that rate apply from the stations named to Chicago, thence to Kankakee, and thence to Battle Creek?
A. Yes, sir.
Q. And those are stations in the lake local territory?
A. Yes, on the Alton.

Mr. Belnap: That is all.
Exam. Taylor: Is there anything on re-cross.

Recross-examination.

By Mr. Day:

Q. You say you have not got this tariff naming the rate and route from Flanagan and Graymont to Battle Creek, but you do say that tariff would apply into Chicago via Illinois Central, out of Chicago via New York Central; and the New York Central rate, of course, is down to South Chicago, Indiana Harbor and through Schneider back to Kankakee, Illinois, and then from Kankakee, Illinois, back in a northerly or northeasterly direction to Battle Creek; that, you say, is the tariff route?
A. That is right.
Q. And that in the tariff there is provision for such a [fol. 2165] route as that.
A. There is.
Mr. Belnap: In which tariff, Mr. Schimmel?
A. No. 68, on the through move.

By Mr. Day:

Q. Now, on this relatively short movement, then, from Flanagan or Graymont, to Battle Creek you would have that circuity approaching 150 miles by reason of that back haul?
A. Yes.

Q. And would the tariff also have the direct route of the Illinois Central to Kankakee, thence New York Central direct from Kankakee to Battle Creek, which would not enter Chicago at all?

A. I don't know about that, the direct in there.

Q. You don't know whether it has that direct route?

A. Well, I would say that it would have the direct route in there; but I am not positive on that point.

Q. It does have this ridiculously circuitous and back-haul route that you described?

A. Yes, it has that.

By Mr. Enoch:

Q. Directing your attention to these expense bills on intrastate shipments from points in Illinois to Chicago that have paid the so-called lake local, have you ever attempted to secure the application of any proportional rate or reshipping rate out of Chicago, all rail, by surrendering that [fol. 2166] kind of a bill?

A. Oh, we have received the proportional rates, Mr. Enoch.

Q. Do you do that the same as you get the transit balance?

A. Yes, it is in practically the same manner. I have used the two systems. Again, where these points, where the lake local as compared with the interstate to Chicago was maybe one-half cent a hundred different, and we have used the same system I explained before in billing out. On the one hand we bill out at the balance of the rate; and on the other hand they paid the rate but had the inspection bureau put it 12 cents, and then bill it out at the regular proportional. In that case the western road would finally bill on us for one-half cent or one cent, whatever it would be.

Q. I am not sure that I made myself clear: take a shipment originating at a point in Illinois, from which to the destination in the east there is no joint one-factor rate; and that shipment moves into Chicago on the lake local, which is an intrastate rate; now, when you want to move that to the eastern destinations,——

A. You mean on the reshipping rate?

Q. Yes, on a reshipping rate, or a proportional rate to that point?

A. The usual practice is to use regular reshipping proportional to go out; the regular Illinois reshipping. Take New York as an example, 26 cents: now, if we applied one [fol. 2167] of these lake local bills, and we obtained a 26-cent proportional rate out, then, as I expressed before, the Inspection Bureau would notify the western road to bill back upon the shipper for the difference between the lak local and the interstate to Chicago.

Mr. Brown: Just on that point: now, Mr. Schimmel, on your billing directions which you take down to the Bureau it shows the point of origin, the kind of grain, and the weight, and where it is going; doesn't the transit bureau show on there the interstate rate to Chicago which you must pay before you get that 26-cent rate?

The Witness: Yes, they do.

By Mr. Brown:

Q. So you are not getting transit on the intrastate rate, but you are transiting on the interstate rate?

A. Well, yes, that is——

Q. I want to get you straight on that: the transit bureau does not take that intrastate rate and give him transit on that; the bureau tells the Rock Island Railroad there is some more money coming to you, and you get it from him; if he does not pay it he is cut off from transit privilege.

Exam. Taylor: What tariff provision authorizes the inspection bureau to tell him that?

Mr. Brown: He goes to 413-K, that has been quoted so much in this record.

Exam. Taylor: That is a rate tariff.

Mr. Brown: No, transit tariff.

[fol. 2168] Mr. Enoch: That is an eastern line transit tariff.

Mr. Brown: No, it is not; the Rock Island is a party to it.

Mr. Enoch: Exhibit 62?

Mr. Brown: Yes, sir, every railroad in Chicago is a party to that tariff.

Mr. Enoch: Mr. Brown, do you recall where the particular provision in this tariff is that relates to that?

Mr. Brown: There are three parts to that; I want the grain reshipping part, the opper part of Rule 61,

Exam. Taylor: Would the bill give any consideration to Rule 15 on page 6 of that tariff—Iwish you would look at that, and refresh your memory on it.

Mr. Brown: That has occurred under 15.

Exam. Taylor: What do you mean, that has occurred?

Mr. Brown: The inbound railroad has received its full tariff rate, which may or may not be what the inbound railroad finally receives in the division of the through interstate rate from point of origin to final destination.

Exam. Taylor: That would not apply in connection with the barges, would it,—on movements via barge to Chicago?

Mr. Brown: No.

Exam. Taylor: Because there is no tariff rate?

Mr. Brown: Yes, there is a tariff rate in the eastbound railroad's tariff, which shows on the inbound grain their [fol. 2169] charge so-and-so.

Exam. Taylor: Beyond Chicago?

Mr. Brown: Yes.

Exam. Taylor: But not up to Chicago?

Mr. Brown: No.

Exam. Taylor: Rule 15 reads shipments delivered to transit houses will be subject to the full tariff rate of inbound tariff, based on actual rates subject to tariff minimum.

Mr. Brown: Yes; and the barge bill of lading or freight bill represented has been registered with the bill and shows——

Mr. Belnap: Mr. Brown, this Rule 15 you are discussing, does that have any effect as to the application of outbound proportional or reshipping rate on the lake traffic?

Mr. Brown: No; it just says—you must register everything you have got with the transit bureau, I don't care whether it is truck or lake or rail, or on what kind of rate; you have got to register that tonnage with the bureau before you can exercise your option of any kind of transit under that tariff, or under the rate tariff in connection with it.

Mr. Enoch: I understand Mr. Belnap's position here that transit is not availed of at Chicago, and is not necessary in connection with the ex-barge rate.

Exam. Taylor: In connection with the engagement of the proportional reshipping rates out.

Mr. Belnap: The through shipment being subject to the [fol. 2170] Commission's jurisdiction.

Mr. Enoch: Well, it just is not transit.

Mr. Belnap: In that sense, it certainly is not.

Mr. Enoch: In what sense could it be?

Mr. Belnap: You will find the shipments which go to storage at the port; the Commission will refer to them as transit arrangement, and consequently reforwarded. Now, it is not transit in the sense we have other rail movements; we know that. The Commission refers to it as transit.

Exam. Taylor: In connection with those shipments that are engaged as the result of it moving that way, imported in that fashion through a warehouse, or what have you at the port,—they have to apply all the rules in the transit tariff to engage in the rate outbound.

Mr. Belnap: All the rules which would be applicable, yes. I think that should always be said, Mr. Examiner; because any one of these tariffs contain groups of rules of which only a few of them may be applicable. Isn't that correct, Mr. Brown?

Mr. Brown: That is right. Grain may come in from LaSalle, corn, on the lake local rates; that is white corn. There is a buyer in Milwaukee, of white corn; there is a fellow up there who is a constant user. He buys that corn here in Chicago, and they put the LaSalle bill behind it; it is not necessary to do it, because it is a local rate from [fol. 2171] here to Milwaukee, 5½ cents. Yet we have to cancel that anyway; the man at Milwaukee says, I want a bill behind it, because I may want to convert that whole thing clear back from LaSalle to an interstate shipment.

Exam. Taylor: Do you take the same position, Mr. Belnap, with regard to Rule 61 that I referred to?

Mr. Belnap: You mean the top portion that Mr. Brown referred to?

Exam. Taylor: Yes.

Mr. Belnap: I take the position that that rule does not affect the rate application in the rate tariff, as to the applicability of proportional or reshipping rates.

Exam. Taylor: Thank you.

Mr. Belnap: Am I correct in that, Mr. Brown?

Mr. Brown: Not altogether; ex-barge corn is the same, is in the same position as corn that comes in from Iowa, flat local rate to Chicago; that is registered with the bill. And in that you get the through rate from origin to destination, whatever it may be. The balance of the rate is the reshipping rate.

Mr. Enoch: You mean after it moves out of Chicago six months later than the time it comes in?

Mr. Brown: Yes, sir; grain from your stations in Iowa, and pay a flat local rate. Under that rule they will take surrender of that bill through the bill with Mr. Schimmel [fol. 2172] here, and give him the reshipping rate.

Exam. Taylor: The distinction being that the Iowa origins show the rate in, and the barge shipments do not.

Mr. Brown: That is the distinction, in which the eastern rails have no particular interest financially.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Let me ask your witness here,—he is an expert; when you engage the outbound proportional or reshipping rate, do you consider applicable rules in the transit tariff? I said applicable rules, now.

The Witness: Yes, there is a rule in the——

By Exam. Taylor:

Q. For instance, you would not apply a backhaul rule here, authorizing backhaul on your shipments?

A. No, certainly not.

Mr. Belnap: I have one other matter, Mr. Examiner: There was a discussion, Mr. Examiner, as to Mr. Schimmel's exhibit 73, as to the tonnage which was embraced therein,—embraced within each of the specifications shown on that exhibit. I have here a copy of the source for those tonnage figures for the year 1935, annual report of the Chief of Engineers, U. S. Army, 1936,——

Exam. Taylor: Just off the record.

(Discussion outside of the record.)

Mr. Belnap: —in which on page XI is contained the defi- [fol. 2173] nitions of the terms used for the kinds of traffic for which statistics are given in the report. I would like to read the two paragraphs from that which define the terms as they appear on exhibit 73. This is headed Terms for Kinds of Traffic: The terms applied to the kinds of traffic as found in this report are explained as follows: imports and exports.—These terms apply to traffic between the United States and foreign ports, including the Philippine Islands and the Canal Zone. Traffic with Canada is

supplemented by the term 'Canadian,' to differentiate from over-seas traffic. Coastwise Receipts and Coastwise Shipments.—These terms apply to traffic receiving a carriage over ocean, the Gulf of Mexico, or important arms of the oceans, or the Gulf of Mexico, with the exception of Chesapeake Bay and Puget Sound localities, and also to traffic with Alaska, Hawaii and Puerto Rico. Traffic between Great Lake ports and Seacoast ports, is also termed coastwise. Lakewise Receipts and Shipments.—These terms apply to traffic between United States ports and the Great Lakes.''

Exam. Taylor: Is that all?

Mr. Belnap: That is all I have.

Exam. Taylor: I just have one more question, Mr. Schimmel: in engaging the application of the proportional and reshipping rates east of Chicago, do you use rules 15 and 61 of Agent B. T. Jones' ICC 3204?

The Witness: Yes, we would observe those rules.

[fol. 2174] Exam. Taylor: Is that all from this witness?

Mr. Belnap: That is all.

Exam. Taylor: Does that bring up any other questions? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: We will recess until 2:00 o'clock.

(At 12:30 p. m., a recess was taken until 2:00 o'clock p. m., January 24, 1940.)

Afternoon Session.

2:00 o'clock p. m.

Exam. Taylor: Come to order, gentlemen.

Mr. Belnap: Mr. Examiner, Mr. Schimmel has concluded; I would like to offer his exhibits, which are Nos. 67 to 79, inclusive.

Exam. Taylor: They will be received.

(Protestants' Exhibit- Nos. 67 to 79, both inclusive, Witness Schimmel, received in evidence.)

Exam. Taylor: Call your next witness.

Mr. Belnap: Mr. Rich.

Exam. Taylor: Off the record, identify your exhibits:

(Protestants' Exhibit- 80 and 81, Witness Rich, marked for identification.)

C. J. RICH was sworn and testified as follows:

Direct examination.

[fol. 2175] By Mr. Belnap:

Q. State your name, please.
A. C. J. Rich.
Q. Whom are you employed by, Mr. Rich?
A. Norris Grain Company.
Q. In what capacity?
A. Traffic man.
Q. How long have you been so employed?
A. Twelve and one-half years.
Q. Are you familiar with the issues in this proceeding?
A. Yes, sir.
Q. And acquainted with the rates and rules and regulation which are here involved?
A. Yes, sir.
Q. Have you had prepared under your supervision and direction two exhibits which have been distributed and numbered Nos. 80 and 81?
A. I have.
Q. What is your exhibit 80?
A. Exhibit 80 is a history of lake locals, interstate proportionals, and specifics from Illinois origins to Chicago, Illinois.
Q. These are the same exhibits as shown in witness Sperry's exhibit 13?
A. They are to the extent of the 1939 and present rates.
Q. But the origins themselves?
[fol. 2176] A. The origins are the same as those shown in Agent Sperry's exhibit 13.
Q. Did you carry this history of the lake locals back to the time of their first publication?
A. I did.
Q. What is your exhibit 81, Mr. Rich?
A. Exhibit 81 shows the receipts of all grains via lake, of all grains via barge and of grain via rail for the period

from May 1, 1939, to November 30, 1939, and for the period December 1, 1939, to January 13th, 1940; and also the disposition by per cent of all grain received by water in the period from May 1, 1939, to January 13, 1940.

Q. Does this situation present any different showing, if you brought it right down to date; that is, have you any particular situation since January 13th, 1940 that is worthy of comment?

A. As the exhibit from December 1, 1939, to January 13th, 1940, shows, the preponderant rail movement east of Chicago, so would the period from January 13th, 1940, to the present time show the same preponderant proportion.

Q. Have you ascertained from your records, Mr. Rich, the disposition you made of certain grain received by barge as to which the inbound billing is covered by exhibits in this record?

A. I have.

Q. Can you take each of those up in turn, those exhibits, [fol. 2177] and state what the disposition was; do it in a fashion so that you will identify the inbound bill to which you refer, and then what you did with that grain?

A. Exhibit No. 27 covers the steamer Maritana loaded at Duluth, Minnesota, and unloaded at the Irondale elevator on August 25, 1938.

By Exam. Taylor:

Q. Where is the Irondale elevator?

A. The Irondale elevator is located at 107th and Muskegon Avenue; that is in South Chicago.

Q. Is it on the river?

A. It is on the river. It contained 8,047,680 pounds of tonnage.

By Mr. Belnap:

Q. I want you to just summarize it, so that the record will show where you shipped the grain by general description, whether by lake or by rail into Central territory, or by rail into Eastern territory; and if you can, where the preponderance of it went.

A. A small proportion of this tonnage was sold to local industries, such as the Northwestern Yeast Company, Arcady Farms Milling Company, B. A. Eckhart Milling Company; and what their disposition of it was, I don't know.

Q. You simply had it switched across town?

A. Across town to their plant.

Q. That is at Chicago?

A. Yes. About one-half of the remainder went to destina-
[fol. 2178] tions in Central Freight Association territory, using the ex-Northwest rate application from Chicago to such destinations as Toledo, Ohio, Louisville, Kentucky, Lawrenceburg, Indiana, Indianapolis, Indiana, Cincinnati, Ohio. And the remainder went to Trunk Line and New England destinations, such as Norfolk, Virginia, Glynbrook, Maryland, Salem, Virginia, Blue Ray, Virginia.

Q. Did it all move out by rail?

A. It all moved out by rail.

Q. What species of grain does that cover?

A. This is rye; exhibit No. 32 is a barge, No. 745, from Morris, Illinois, on November 25, of soya beans, unloaded in the Norris elevator on November 29, 1939, the entire unloading weight of which was switched across town to the Archer Daniels Milling Company, on the St. Paul Railroad. Exhibit No. 33 had a split load of oats and corn. The oats went to destinations in Central Freight Association territory;——

Exam. Taylor: Just a minute; did you say exhibit 28, the preceding one?

The Witness: Exhibit 32.

Mr. Belnap: Exhibit 32 was soya beans.

Exam. Taylor: All right, exhibit 32 also had some oats, didn't it? The great majority of that shipment——

The Witness: My records do not show that it had any oats in it.

[fol. 2179] By Exam. Taylor:

Q. Are you sure it is exhibit 32?

A. That is what I have here; yes, sir. I had exhibit 33, which had oats in it.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: The freight bill covering the shipment marked exhibit 32 shows the shipment to have consisted of 19,271.08 bushels of oats, and 8,014.20 bushels of beans.

The Witness: The exhibit 32 showing oats was overlooked be me, and I have not got the disposition of that oats portion; but I can furnish it.

By Exam. Taylor:

Q. You also made the statement that beans to which you referred were switched across to the——

A. Switched across town to the Archer Daniels Midland Company, on the St. Paul Railroad.

Q. This bill shows that 16,680 pounds of oats were unloaded in the Irondale elevator on November 27th, and 480,960 pounds of beans were unloaded in the Norris elevator on November 29th.

A. I have the bean portion here, but not the oat portion.

Mr. Belnap: We will supply that, Mr. Examiner. I did not notice that he had overlooked that.

Exam. Taylor: Proceed.

The Witness (Continuing): Exhibit 33, barge No. 4, from Henry, Illinois, on November 25, 1939, had on it 150,480 pounds of oats, and 241,480 pounds of corn.

[fol. 2180] By Mr. Belnap:

Q. And it also had 235,000 and some pounds of beans?

A. I have not got the bean record here, but I also can furnish that.

Q. Tell us about the oats; where were they shipped?

A. The oats on this barge went to destinctions in Central Freight Association territory.

Q. What were the towns?

A. Bellevue, Ohio and Pittsburgh, Pennsylvania.

Q. What rate was applied?

A. To Bellevue, Ohio, the ex-Northwest rate of 16½ cents was applied; and to Pittsburgh, the Northwest rate of 21½ cents was applied.

Q. Where did you ship the corn?

A. The corn went large- to Paris, Illinois, via the Big Four Railroad, on a 12-cent local rate; and one car went to North Troy, Vermont, via the Wabash, Canadian Pacific Railroad on the 28-cent proportional rate.

Q. Is that a processor at Paris, Illinois?

A. Yes, sir; a starch mill.

Q. That is a starch mill?

A. Yes, sir. Exhibit No. 34, barge No. 7, from Chillicothe, Illinois on November 27, contained 690,600 pounds of corn, two cars of which went to Paris, Illinois, five cars went to Toledo, Ohio, and a small portion went to North Troy, Vermont.

[fol. 2181] Q. On the Toledo shipment you applied the Northwest proportional?

A. We did. I believe the rate is 15½ cents.

Q. To North Troy, Vermont, you applied what?

A. North Troy, Vermont, we applied the proportional rate of 28 cents. Exhibit No. 35 is Barge No. 1108, from Patonville, Illinois on April 7th, 1939. It contained 1,546,290 pounds of corn and it was unloaded in the Norris elevator.

Exam. Taylor: Unloaded in the Norris private and public elevator?

The Witness: It is all one elevator.

By Mr. Belnap:

Q. Where did you ship that corn?

A. Six cars of this barge were forwarded to Toledo, Ohio, and the balance going to Trunk Line territory.

Q. On the same rate application you previously described?

A. Yes, sir; except these destinations took the Virginia City rate of 23 cents on grain.

Q. That is the Eastern destination?

A. Eastern destination; and several cars took the Philadelphia rate of 24 cents. Exhibit No. 36 was Barge No. 1112, from Patonville, Illinois, on April 12, 1939, and contained 1,581,590 pounds. It was unloaded in the Norris elevator. Almost 1,200,000 pounds of the tonnage on this barge was used out against lake cancellation; that is, it went out by lake steamer. The rest of it went to arbitrary [fol. 2182] territory, and one car went to a Philadelphia rate point.

Q. What do you mean by arbitrary territory?

A. Arbitrary over the termini.

Mr. Brown: Over Pittsburgh?

The Witness: Yes. That is all I have.

By Mr. Belnap:

Q. Let us go back to the beginning of these and find out about the inbound billing; will you take up each of the in-

bound bills and tell us about what sort of a bill of lading you got, or where you got it from, and who made it out, and who handled the shipment,—who made out the expense bill, and how the transaction to payment of the inbound charges was handled; and also as to registration of that inbound document with the inspection bureau; give us all the details.

A. Exhibit No. 27, being a lake vessel, we surrendered two copies of the lake bill of lading to the Central Inspection and Weighing Bureau.

Q. Start with getting the bill of lading first; start right from the beginning.

A. We having purchased the cargo of rye from some company in Duluth, they after loading the rye aboard boat, had lake bills of lading issued, the originals of which they forwarded to us through banking channels; and upon receipt by us, after ascertaining that the bill of lading weigh tickets and inspection was all right, we gave the bank our check for the grain; and from then on the bill of lading belonged to us.

[fol. 2183] Q. Go ahead.

A. We took two copies of this original bill of lading to the Central Inspection and Weighing Bureau, who put their stamp and record number thereon, they keeping one copy and returning one to us. I also might add that on the bottom of these copies of bills of lading we wrote the total amount of grain which was unloaded from the boat, the boat it was unloaded from and the elevator into which it went. From then on it was live transit tonnage, and we used it out as such.

Q. You have not dealt with the expense bill or the payment of the freight charges, or anything of that sort, as yet?

A. That is all there is to that.

Q. Was there an expense bill as such, or any similar document, on that lake shipment?

A. We received no expense bill, the freight having been paid by the shipper at Duluth; and the bills of lading were marked freight to be paid as per agreement, there being no rate shown thereon.

Q. Was there any sum of money shown thereon?

A. No, sir.

Q. Is that situation commonly true as to documents covering lake movements?

A. Yes, sir.

Q. And has that always been true, that you simply have a lake bill of lading that states in general terms what the [fol. 2184] freight has been paid, but gives neither any rate nor any amount?

A. Yes, sir.

Q. You always register that document with the inspection bureau for the purpose of ultimately seeking a proportional or reshipping rate east of Chicago?

A. Yes, sir.

Q. And have the inspection bureau and the rail carriers always provided for the application of those proportional or reshipping rates on such -exlake grain as evidenced by that document?

A. That is right.

Mr. Enoch: You mean by that that they applied the proportional rates?

The Witness: They have applied the proportional rates.

By Mr. Belnap:

Q. I meant applied, sir.

A. Exhibit No. 32, Barge No. 745, was a barge of grain which we purchased from Lowell-Hoit & Company. After the barge was received at our elevators and the cargo outturn weight ascertained of the Weighmaster's department, Lowell-Hoit & Company billed on us for the grain.

Q. Now, you are talking about the purchase price of the grain?

A. I don't know anything about the price.

Q. I mean the payment for the grain itself, or are you talking about the charge?

A. The payment for the grain; they billed us for the value of the grain, with the original bill of lading attached [fol. 2185] to their invoice. Then several days later we would receive from them a paid original expense bill covering the freight aboard this barge. This bill would already be recorded with the Central Inspection and Weighing Bureau, as is customary in purchasing grain through commission houses.

By Exam. Taylor:

And Lowell-Hoit is a commission house?

A. Yes, sir. So after being received by us it was merely necessary for us to put it in our files until such time as we wanted to make use of it.

By Mr. Belnap:

Q. On that particular expense bill, did Norris Grain Company pay the transportation charges indicated on that expense bill?

A. No, sir.

Q. You just simply received the document which was a receipt showing that they had been paid?

A. That is right.

Exam. Taylor: May I ask a question: are you familiar with Rule 37 of B. T. Jones' ICC 3204, requiring certain certificates as to transfer of tonnage or ownership, especially paragraph B thereof, paragraph B reading, "Where a change of ownership of commodities in the same house is by a bona fide sale from one party to another, the following endorsement shall be made: the tonnage represented by this freight bill, blank, paranthesis, insert here name of house, has been sold by blank to blank; date shown." This bill does not show any of that information.

[fol. 2186] A. That is a copy and would not show that information; but it is customary in all commission houses, when providing original paid expense bills that they endorse it over to us on the reverse side. That endorsement is shown on the original expense bill, not on the copy.

By Exam. Taylor:

Q. Exhibit 32 is not complete?

Mr. Belnap: I will have to ask Mr. Cole about that; Mr. Cole offered the exhibit.

The Witness: I might add, Mr. Examiner, that about 99 per cent of the Commission houses do not follow that wording; they merely have a stamp that shows after the order of Norris Grain Company; and then a stamp shows the Commission house's name underneath it.

By Exam. Taylor:

Q. That would be a substantial compliance with the rule?
A. Yes.
Q. Exhibit 32 as reproduced in this record does not show either on its face or on the back——
A. Those exhibits are only copies.
Q. Where are the originals?
A. The originals are retained by us in our office; we have them.

By Mr. Belnap:

Q. You mean to say that the copy of that bill filed with the Central Inspection and Weighing Bureau does not carry that endorsement, that only the original you retain [fol. 2187] carries it?
A. That is right; that is because the railroads recognize only the original as negotiable.

Mr. Belnap: Mr. Examiner, exhibit 32, I think, was offered by Mr. Cole. If you would like to have us, we would be glad to supply a copy of the original of that bill, so that you can see that stamp.

Exam. Taylor: Well, if the witness states that a substantial compliance has been made with Rule 37 of the Jones tariff referred to, and then the respondents are willing to accept that without further verification, it is all right with me.

Mr. Cole: According to what the witness just stated, exhibit 32 as it was introduced is a true copy of the information on file at the inspection bureau.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

By Mr. Belnap:
Q. That is correct, is it not?
A. It is.
Q. But you have a copy of that freight bill which has an endorsement on it?
A. Yes, sir.
Q. And the one you have is the original?
A. Yes, sir.

Q. Is your handling of ex-barge billing in respect of this matter of endorsement precisely the same as the way you [fol. 2188] handle railroad inspection bills?

A. That is right.

Q. Including bills on the Rock Island Railroad?

A. That is right.

By Exam. Taylor:

Q. From that, do we understand that you can use John Jones' billing outbound on all-rail inbound shipments, and outbound; you do not have to show ownership?

A. Yes; the receipt by us of the original bill of lading proves our ownership. Insofar as the transit operation of an elevator is concerned, the operator of the elevator is the custodian of all the live tonnage, and uses same out according to his desires.

Exam. Taylor: All right.

Mr. Belnap: I do not believe I got the purport of your question about the John Jones, Mr. Examiner.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Mr. Belnap: I understand, Mr. Examiner, your point in saying John Jones was that the inspection bureau has a document on file with it showing Lowell-Hoit owns the grain?

Exam. Taylor: Yes.

Mr. Belnap: And the witness said that is true, both on ex-barge and ex-rail grain,—the endorsement only on the original.

Exam. Taylor: Yes, which the inspection bureau does [fol. 2189] not hold.

By Mr. Belnap:

Q. At the time that bill was registered with the inspection bureau was the endorsement on the back of the original, was the inspection bureau stamp on it?

A. It was.

By Exam. Taylor:

Q. On this Lowell-Hoit bill?

A. Yes, sir; I presume it was.

Q. Well, we want the fact; we do not want you to guess at it.

A. Well, I cannot say when they put the stamp on, either before or after it was recorded.

Q. I understand you to say in your previous testimony that Lowell-Hoit & Company had presented the bill for registration of the tonnage?

A. Yes, sir; they did.

Q. How could the stamp have been on the back of the bill, then if they were the owners at that time; and you say now the stamp when you bought the grain was on the reverse side of the bill.

A. No; when we pay the draft of Lowell-Hoit & Company the grain automatically belongs to us.

Q. And the stamp is put on the back of the bill?

A. No, sir; not until several days later, when they are able to get a paid expense bill from whomever they get it from in their office, they take the original and a copy down to the Central Inspection and Weighing Bureau who then puts their recording stamp on it; that is two separate operations.

[fol. 2190] Exam. Taylor: Is that clear?

By Mr. Belnap:

Q. You could not state of your own knowledge that at the time Lowell-Hoit & Company took it down there it had the endorsement on it, could you?

A. I don't know what happened to it, until it came into my possession.

Q. But you did say that is the same as the ex-rail billing is handled?

A. Yes, sir.

Q. When you buy grain from a commission house?

A. Yes, sir.

Q. When it comes to reshipping that tonnage and claiming a proportional and reshipping rate, do you have to submit that original bill, or does the inspection bureau operate on the basis of the copy which they have on file?

A. They operate on the basis of the copy which they have on file.

Q. The records you keep are open to their examination, however, are they not?

A. That is right.

Q. Is this bill with the endorsed stamp on it one of the records which you are required to keep and do keep under the provisions of the transit tariff?

A. That is right.

Q. On what basis was the grain bought, shown in exhibit 32?

[fol. 2191] A. I cannot speak as to how it was bought.

Q. I don't mean the price paid for it?

A. It was bought delivered Chicago.

Q. So that Norris had nothing to do with the freight charges on that shipment?

A. No, sir.

Q. Since it was bought delivered? Now, will you take up the next one, please.

A. Exhibit No. 33 is Barge No. 4, from Henry, Illinois, Henry, Illinois being one of our stations.

By Exam. Taylor:

Q. What do you mean by stations, one of your elevators?

A. Country stations, country elevator.

By Mr. Belnap:

Q. That was your grain at the time of shipment?

A. That is right. The elevator at Henry belonging to us, and all the grain therein. We would advise Mr. Mechling to spot a barge at the elevator, and after it is loaded our elevator superintendent would make out a bill of lading which would be signed by Mr. Mechling.

Q. Mechling personally, or the shipper of the boat?

A. Either by him or one of his agents; I don't know just whom. And one being pushed up alongside of our elevator at South Chicago, we would unload the grain; and then the next day upon the receipt of the accurate weights from the [fol. 2192] Weighmaster's department we immediately make out a statement from Mr. Mechling, attach our check with the freight thereto.

Q. This is after the grain is unloaded?

A. That is right. Then, we would take two copies of the barge freight bill which is made out in our office to the Central Inspection and Weighing Bureau, and they would record it the same as they had this previous barge from Lowell-Hoit & Company; it would not be necesary to en-

dorse the reverse of this, because the grain would belong to use from start to finish.

Q. Do you make them out on a supply of blanks supplied to you by A. L. Mechling?

A. We do, in full agreement with Mr. Mechling.

Q. Do you show on that expense bill the amount of freight charges paid?

A. No, sir; for convenience, perhaps, we just show it prepaid. When this barge business first started coming into Chicago in large quantities, we experienced difficulty with various country elevator operators in getting them to appreciate the value of an original barge freight bill. So as that inconvenience was considerable in living up to Rule 19 of transit tariff 413-K we ultimately made an arrangement with Mr. Mechling to handle the transaction in this manner: by marking it prepaid, instead of showing the rates and the amount, it eliminates the necessity of sending the freight bill back and down into the country to be accepted. [fol. 2193] Q. Do you have a record in your office, which you keep, which shows your statement to the A. L. Mechling Barge Line, and the amount of freight charges you paid?

A. We do.

Q. Is that one of the records which is at any time open to the inspection bureau?

A. It is.

Mr. Cole: I do not understand why it would be necessary to send a freight bill back down to the country for signing. You mean to Joliet, or the origin point?

The Witness: To where—yes, to Joliet now, yes. If we made a freight bill out in our own office and extended the rate and the amount and attached our check thereto, we would have to send both to him for receipt. But under the arrangement we have at the present time, we handle it as I have just mentioned.

Mr. Cole: I didn't understand that, how you handle it now.

Mr. Belnap: Let us go off the record.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Mr. Cole: There are four of these expense bills that they have made a part of the record here, as exhibits 33, 34, 35, and 36.

[fol. 2194] Mr. Belnap: He is going to take each one up in turn. He is describing 33.

Mr. Cole: All right; well, 33, then: from what you have just said, I understand that the freight charges on that shipment were paid after the shipment was unloaded at the destination.

The Witness: That is right.

By Mr. Cole:

Q. When the expense bill was stamped on it, or written on it, "Prepaid?"

A. Prepaid.

Mr. Belnap: He said that.

Q. I understand that prepaid means something paid before the movement took place; I was wondering how that word prepaid complies with my understanding of what prepaid means. Why did they use the word prepaid there?

A. I explained that just a minute ago.

Mr. Belnap: Tell him over again.

The Witness: We used the word prepaid instead of extending the amounts out, to eliminate the necessity of sending the original barge freight bill back down into the country to be receipted, for our own convenience.

By Exam. Taylor:

Q. You mean back down to Joliet?

A. Yes, sir.

Q. This particular freight bill that we are talking about now, exhibit 33, shows that the prepaid is only upon the [fol. 2195] corn and oats and not upon the beans?

A. No, that being typewritten it is meant to cover the whole thing.

Q. The brackets are only on the two items;——

Mr. Belnap: The one they sent me shows the brackets on all three items. Now, if we are clear on that one, we can go to the next one.

Exam. Taylor: The weights shown on exhibit 33 are in pounds, aren't they; they are not in bushels?

The Witness: They are in pounds; yes, sir.

By Mr. Belnap:

Q. Are those the out-turn weights?
A. Out-turn weights.

By Exam. Taylor:

Q. What prevents showing the rate that was paid on these shipments? Why shouldn't the rate be put in there—any particular reason?
A. No, sir; just for the reason that I have mentioned.
Q. Do you know what the rate was that was paid on this shipment from Henry?
A. They are the rates that Mr. Mechling gave in his testimony.

By Mr. Belnap:

Q. The same rate shown in Mr. Schimmel's exhibit 67?
A. That is right.

Exam. Taylor: Go to the next one now.
The Witness: Exhibit No. 34, Barge No. 7, from Chillicothe, Illinois; this also is one of our country stations, [fol. 2196] and the grain loaded in the barge belonged to us at point of origin. This is handled in the same manner as the preceding exhibit, except that it is on a barge bill that shows Sheffield, Illinois, as Mr. Mechling's address. That used to be his address; I also believe his home was there several years ago. And a man in our office that makes it up happened to strike an old block which he had in his possession.
Q. You mean an old block of forms?
A. That is right; exhibit 35, Barge No. 1108 from Paytonville, Illinois, was grain purchased from Finnegan Grain Corporation by us on a delivered Chicago basis; and also put on one of Mechling's Sheffield, Illinois barge invoices.

By Exam. Taylor:

Q. Barge bills?
A. Barge bills; yes, sir; this being handled by the A. L. Mechling Barge Line, we handled it in the same manner as we handled grain coming from our own stations in the country. First is the issuance of the bill of lading—in this case, the Finnegan Grain Corporation would furnish us

with the original bill of lading, which would come in our possession after we had paid him for the grain.

By Mr. Belnap:

Q. As far as the freight charges are concerned, you do not pay those, do you, for your own account; but you do pay them for Finnegan's account.

A. We deduct the amount of freight for Finnegan's grain receipts, and then send Mr. Mechling his freight check from [fol. 2197] our office, and then record and handle the barge freight bill according to the preceding exhibits.

Q. That figure shown on there, 1,546,290 is pounds?

A. That is the out turn weight in pounds.

Q. All right.

A. Exhibit No. 36 is an identical case, and was handled precisely as exhibit 35.

Q. From what points on the Illinois River has the Norris Grain Company received grain during 1939?

A. Morris, Ottawa, Henry, Hennepin, Chillicothe, Lacon, Pekin, Havana.

By Exam. Taylor:

Q. Would you include Paytonville?

A. Yes, sir.

By Mr. Belnap:

Q. And what barge lines have been utilized in the transportation of that grain?

A. The A. L. Mechling Barge has been used exclusively.

By Exam. Taylor:

Q. Just a minute, this last statement you made, that you used the Mechling Barge Line exclusively,—I noticed on your exhibit 32 the bill is Allied Barge Corporation.

A. I meant, Mr. Examiner, that where the Norris Grain Company transports its own grain it uses Mechling Barge Line exclusively.

By Mr. Belnap:

Q. Complete that, then; what you use when you purchase grain from others, what transportation is used in the trans-
[fol. 2198] portation of grain?

A. When we purchase grain from others, the original owners of that grain will transport it in whatever barge line they have their agreements with and choose to ship it over.

Q. What barge lines have been used in 1939 in the transportation of grain of Norris Grain Company, which Norris purchased through others?

A. I don't believe there has been any except the Allied Barge Corporation.

By Exam. Taylor:

Q. That is all you had to do with it, you just bought it after it got up here?

Exam. Taylor: Very well.

By Mr. Belnap:

Q. That is, that purchase would be before the arrival of the grain, would it not?

A. Those contracts are usually made on the basis of what they call to arrive, made on the basis of 10,000, 15,000, 25,000 bushels at a time, and the Commission house would purchase against that to arrive contracts.

Q. Now, will you turn a moment to your exhibit 80; does this exhibit show all the lines of railroad and all the stations from which lake locals are presently maintained to Chicago?

A. It does.

Q. Have you made a check to determine, according to individual railroads, how many miles of line are involved in that lake local territory?

[fol. 2199] A. Yes, I have.

Q. Will you please state it for each railroad, the number of miles and also the number of stations?

A. The Elgin, Joliet & Eastern have 98 miles in this territory, serving 17 stations. The New York Central and the Michigan Central combined have a total of 23 miles serving 49 stations. The Wabash Railroad, 95 miles, serving 24 stations. The Alton Railroad, 149 miles, serving 38 stations. The Santa Fe, 112 miles, serving 28 stations. The Chicago, Burlington & Quincy, 400 miles, serving 101 stations. The Chicago & Eastern Illinois, 55 miles, serving 17 stations. The Chicago, Great Western, 64 miles, serving

19 stations. The Chicago & North Western Railroad, 210 miles, serving 53 stations. The Rock Island Railroad, 124 miles, serving 25 stations. The Illinois Central Railroad, 204 miles, serving 53 stations. And the Chicago, Milwaukee, St. Paul & Pacific Railroad, 220 miles, serving 48 stations.

Q. Mr. Rich, will you please look at Mr. Schimmel's exhibit 76; are you familiar with the adjustment of rates shown on that exhibit?

A. I am.

Q. Are the rates there indicated as lake proportionals so termed in the tariff in which they are published?

A. They are.

Q. Some years ago was there in effect from a large por-
[fol. 2200] tion of Illinois a rate of 6.5 which were termed lake proportionals, and which have a similar application shown in that exhibit?

A. There were.

Mr. Enoch: Where are those now.

By Mr. Belnap:

Q. They were termed lake proportionals in the tariff, were they?

A. Yes.

Q. As I understand it, they were simply rates which were lower than the local rates, provided that grain was reshipped from Chicago via lake?

A. The general application, as I remember it, read so that the proportional or specific to Chicago would also apply outbound via lake.

Q. And a higher rate would be in effect on a local movement to Chicago?

A. From points where the flat local rate was higher than the specific; yes, sir.

Q. Referring again to Mr. Schimmel's exhibit 76, do the tariffs indicated on that exhibit as authority for the lake proportionals there shown provide by the terms of the tariffs themselves that the rates contained therein will be subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission?

A. They do.

Q. Will you give the tariff items?

[fol. 2201] A. Chicago & Eastern Illinois tariff 600-B, Rule No. 150; Chicago, Milwaukee, St. Paul & Pacific tariff 15165-C, Rule No. 50; and Illinois Central tariff 1537-K, Rule No. 160.

Q. As to grain which moves into Chicago from stations where the local rate to Chicago is higher than the lake proportional, what is paid at the time the grain is delivered into elevators at Chicago?

A. Upon receipt of the grain into an elevator at Chicago, the flat local rate to Chicago is paid.

Q. Is the billing then registered with the inspection bureau?

A. It is.

Q. Now, in the case of a reshipment of that rate by lake, do you get your money back by complying with such rules as are applicable in the transit tariff; I mean, get a refund down to the basis of the lake proportional.

A. We do. The mechanics of the operation is that we cancel the flat local with the Central Weighing and Inspection Bureau, showing the destinations of the steamer and the name of the steamer on which it is applied; and in due course they return to us the original paid freight bill, endorsed on the reverse side of which will show the name of the steamer upon which it was applied and the amount of the refund which we are entitled to. We then file our claim in the ordinary manner with the freight claim agents of the various railroads.

Mr. Belnap: That concludes Mr. Rich's direct.

Exam. Taylor: Is there any question by protestants? [fol. 2202] Mr. Macaulay?

By Mr. Macaulay:

Q. Mr. Rich, do you know how long you have used barge billing from points along the Illinois waterway in the manner you have described?

A. I don't know the exact time, I think it was somewhere in 1935.

Q. You don't know whether any shipments were received in 1934?

A. There were shipments received.

Q. Do you know how those were handled?

A. I do not recall, no. How do you mean, how they were handled?

Q. Well, were the freight bills similarly recorded with the Central Weighing and Inspection Bureau and reshipping rates accorded on those freight bills in 1934?

A. I am not sure in my mind.

Q. Do you know of any instance when they were not accorded that treatment?

A. I think that they were recorded form the start, and that the proportional rate was accorded the outbound application from the start; but I am not sure.

Q. You are sure that was 1935?

A. Yes.

Q. And you believe it is true before that?

A. I do.

Q. You referred to exhibit 76, when you made the statement that it was necessary to pay the flat local rate in, and [fol. 2203] then if the grain went out via lake a refund was granted; is that true from all of the other intrastate points as set forth in here, exhibit 80?

A. No; the points set forth in exhibit 80 are the intrastate local rates.

Q. Do you then pay the 5-cent local rate from Morris, or do you pay the 9½ cent Illinois proportional rate, subject to the reduction if it goes out via lake?

A. The 5-cent rate is paid at Chicago.

Q. If that grain is consumed in Chicago, and has no further destination, is any further requirement made for payment of the balance of the lake local rate?

A. There is not.

Mr. Macaulay: That is all.

Exam. Taylor: Is there any other examination by respondents? (No response.) Cross-examine. Mr. Cole?

Cross-examination.

By Mr. Cole:

Q. Mr. Rich, when you were talking about exhibit 33, I asked you as to that word on there 'prepaid;' will the answer that you gave me as to exhibit 33 apply as well to exhibit 34, exhibit 35, and exhibit 36, all of which show the word 'prepaid?'

A. That is right.

Q. They were all handled in the same way?

A. That is right.

[fol. 2204] Q. And none of the charges were in fact paid before the transportation took place?

A. They were not paid at the point of origin, if that is what you mean.

Q. Well, they were not paid before the transportation took place either, were they?

A. No.

Q. This billing of rye that is represented by exhibit No. 27, that was shipped in a lake steamer from Duluth down to Chicago; do you know where that rye originated?

A. No.

Q. You don't know where it came from behind Duluth?

A. No.

Q. Do you know whether or not it originated in Duluth?

A. They do not grow rye on the streets of Duluth.

Mr. Cole: That is all I have.

Exam. Taylor: Mr. Day? Mr. Enoch?

By Mr. Enoch:

Q. Mr. Rich, has the Norris Grain Company any financial interest, direct or indirect, in any barge line operating on the Illinois River, in 1938 or 1939?

A. No, sir.

Mr. Belnap: Mr. Examiner, Mr. Mechling, my recollection is, said that he had borrowed some money from Norris; I don't know whether that is embraced within your question or not, but if that sore of transaction is, of course, the [fol. 2205] evidence of Mr. Rich is inconsistent therewith. I don't know whether Mr. Rich is informed about interest——

The Witness: I don't know the financial setup of the Norris Grain Company, or any financial dealings made.

Mr. Belnap: In a case of that character, Witness, I suggest you ought to state you are not familiar with it, rather than tell what the fact is.

By Mr. Enoch:

Q. Does the Norris Grain Company or any of its officers have any stock in any barge line operating on the Illinois River, in 1938 or 1939, if that barge line happens to be a corporation.

A. The stock of the Illinois River Packet Company is owned by Mr. Norris; but I know nothing of the financial dealings of it.

Q. Is that the only situation of the kind about which I inquired, with which you are familiar?

A. That is right.

Q. Referring to your exhibit 81, does it show for the period indicated that all-rail receipts of corn moved out via the lake?

A. Not the total receipts.

Q. Pardon me?

A. Not the total receipts. You mean that total percent column? That total percent applies to the disposition and not the receipts.

[fol. 2206] Q. Does it show that all-rail receipts of intrastate non-transit corn moved out via lake?

A. Of 164,152,800 pounds received, the figures opposite that figure is what went out via lake; yes.

Q. You mentioned the points along the Illinois River from which you had received grain, beginning with Morris, Ottawa, Henry, and so forth; is that all corn and soya beans, mainly?

A. No; the exhibit here shows just what kinds of grain it was: amount received, wheat, 23,000,000 pounds; corn, 275,000,000 pounds,——

Q. I confined it to these origin points; you would not get any wheat, would you, from these points?

A. Certainly.

Q. Were the points you named, the points from which you got grain as shown on exhibit 81, as far as receipts of barge grain are concerned?

A. The points of origin are not shown there.

Q. These are the points of origin?

A. That is right.

Q. From which you got the barge grain that is shown on exhibit 81?

A. That is right.

Q. You said sometime ago that there were some tariffs that referred to some rates as lake proportionals; were you speaking of western lines' tariffs?

[fol. 2207] A. Rates which were in effect in previous years?

Q. Yes.

A. Yes, sir.

Q. When was that?

A. I am not sure of the date; I think they were taken out in 1937. July 1, 1935.

Q. On this Indiana grain that you described moving out via lake, is that transited at Chicago?

A. The freight bills are recorded for transit, but the outbound tonnage is surrendered against an outbound steamer.

Q. Do you consider that that grain was transited at Chicago?

A. Yes, sir.

Q. Do you consider that this ex-barge grain which after its arrival moves out and has been permitted to get the proportional rates, has been transited at Chicago?

A. Yes, sir.

Mr. Enoch: That is all.

Exam. Taylor: Are there any other questions of this witness? Anything on redirect, Mr. Macaulay?

Redirect examination.

By Mr. Macaulay:

Q. Referring to your exhibit 27, you stated that that covered a cargo of rye from Duluth, I believe?

A. That is right.

Q. Have you received similar cargoes of other types of [fol. 2208] grain than rye from Duluth, and made a similar application?

A. I don't remember anything but rye coming down from Duluth. We had two cargoes of barley come down from Ft. William in 1939, that is shown on exhibit 81.

Q. You handled no wheat from there?

Exam. Taylor: From where?

Mr. Macaulay: From Duluth.

The Witness: I do not recall any.

By Mr. Macaulay:

Q. Have you under a similar type of bill of lading received any grain from any points other than Duluth?

A. Yes.

Q. On the lake, say?

A. All the origin points?

Q. Yes, that you received from other origin points than Duluth?

A. 61,937 pounds was received, grain from foreign countries,—from Montreal.

Q. What types of grain, Mr. Rich?

A. Corn, rye; I think that is all we received.

Q. Those bills of lading were similar to exhibit 27?

A. Yes, identical.

Q. And you dealt with them similarly as you described that you dealt with exhibit 27?

A. That is right.

[fol. 2209] Mr. Macaulay: That is all.

By Exam. Taylor:

Q. Mr. Rich, getting back to the question that Mr. Enoch asked you, I believe you said that Mr. Norris owned all of the stock of some river packet company?

A. Years ago the Turner-Hudnut Grain Company of Pekin, Illinois owned and operated the Illinois River Packet Company through Peoria and Pekin.

Q. Where did they operate it?

A. Operating to termini in New England and Trunk Line destinations, with rates on file with the Commission; and that packet line was acquired by the J. Nusbaum Grain Corporation; and when they went out of business, I think in 1934, I think it was,—we acquired it with all the rest of their properties.

Q. Where does this packet line operate from and to?

A. From the river landings.

Q. On the Illinois River?

A. On the Illinois River, to Pekin; and it has joint through rates in conjunction with various eastern railroads on file with the Commission.

Q. Was all the business handled under these joint through rates?

A. Yes, sir.

Q. No contract rates?

A. No, sir.

[fol. 2210] Q. Common carrier, in other words?

A. Yes, sir.

Mr. Cole: I have one more question.

Exam. Taylor: Mr. Cole.

Recross-examination.

By Mr. Cole:

Q. Mr. Rich, Mr. Macaulay asked you if the grain that came in from other lake origins was all handled in the same way that you have described covering your exhibit 27; do you mean that it was handled with the inspection bureau as you described for exhibit 27?

A. That is right.

Q. Was that all you meant when you answered him?

A. That all the mechanics had been; the receipt of a lake bill of lading, or an ocean bill of lading was handled in precisely the same manner as exhibit 27.

Q. And on the inbound recording?

A. That is right; and the outbound also.

Q. Do you remember now where the outbound tonnage went to, whether that went to trunk line territory or Central Freight Association territory; where that went, and—was it grain products out, a large portion of it?

A. A large portion of it went down to Peoria via the Rock Island and the Wabash, and the Alton. And I remember some going to Paris, Illinois, via the Big Four, New York Central. In fact, there was considerable amounts of it [fol. 2211] went as far west as points beyond Kansas City, and the Missouri River crossings—on the basis of the proportional rate.

Q. On the basis of what proportional rate?

A. Proportional rates as set forth in Western Trunk Line tariff 332-B.

Q. Was this the proportional rate that we talked about from Chicago east to Central Freight Association territory, and east to Trunk Line territory; were either one of those rates applied to a shipment that moved from Chicago down to Kansas City or points west of Kansas City?

A. I don't think I followed your question.

Q. We have been talking all along about proportional rates applicable east of Chicago.

A. That is right.

Q. That is, ex-Northwest, and the proportional rates; that is the rates we have spoken of as being applicable to Central Freight Association destinations, and other rates applicable to Trunk Line destinations?

A. That is right.

Q. Now, the material that may have moved into Chicago via lake and then moved to the western destinations, did you use any application of those proportional rates applicable to Central Freight Association territory; or would you find the rates that control the movements to western territory in some other set of tariffs than we have?

[fol. 2212] A. Well, there is a question; the Western District, we have a different tariff. But, as I recall it, there was considerable of it shipped to Central Freight Association territory. I do not recall if any went to Trunk Line.

Exam. Taylor: And the reason for the movement of the grain was because of the shortage of feed——

A. Yes, sir.

By Exam. Taylor:

Q. In the destination territory?

A Wisconsin received over 3,000 cars from us alone.

Exam. Taylor: Is there anything further? Mr. Macaulay?

Redirect examination.

By Mr. Macaulay:

Q. Did any of that go to Eastern Trunk Line territory, or Central Freight Association?

A. I answered that; considerable of it went to Central Freight Association, but I do not recall if any went to Eastern Trunk Line.

Q. And the only shipments that you know, other than shipments from Duluth, that you received via lake is the stuff that came in from foreign countries during the drought; is that correct?

A. No; from time to time there has been grain brought down from Fort William and Port Arthur, and from the Georgian Bay territory there has been grain brought back.

Q. And what disposition was made of that?

A. We used the ex-Northwest application to Central Freight Association, and the Chicago reshipping rate to [fol. 2213] Trunk Line territory.

Q. Was that rye, or some other kind of grain?

A. No; from Port William and Fort Arthur it was either

wheat, barley, or rye; and from other origin points such as the Georgian Bay territory it would be corn.

By Mr. Belnap:

Q. I would like to ask about this movement to the west, of this ex-lake grain; you say it moved on the proportional rates?

A. Yes, sir; Western Trunk Line tariff 332 provides a proportional rate application to a great many destinations set forth in that tariff; not to all of them; on the basis of the proportional rate.

Q. Those are named proportional rates in the tariff?

A. Yes, sir.

Q. And the tariff provides that they will be applicable on ex-lake grain?

A. That is right; a specific provision.

By Exam. Taylor:

Q. And it also applies ex-rail?

A. Yes, sir.

Q. Does it apply ex-barge?

A. No, sir; it specifically mentions ex-lake.

By Mr. Brown:

Q. And those rates apply from all the lake ports, Milwaukee, Green Bay, Duluth?

A. That is right.

Q. Not the same rates, but similar rates?

[fol. 2214] A. Similar rates apply from those re-shipping points.

By Mr. Belnap:

Q. Is that true of all of the rates, or just the ones Mr. Brown referred to?

A. I think it applies from Chicago, Milwaukee, Green Bay, Manitowoc, Duluth, and Superior.

Q. Now, when you applied those ex-lake rates over Mr. Enoch's line to the west, did you register billing with the inspection bureau?

A. The tonnage was registered with the inspection bureau and handled in precisely in the same manner as exhibit 27.

Q. Is this bureau in Chicago the joint agent of both eastern and western lines?

A. They are.

Q. And the billing was made subject to the requirements of the transit tariff, as to policing, just as in the case of your eastbound shipments?

A. That is right.

Q. Was there any difference between them?

A. The only difference in the application of the Western District as against the Eastern District is that the western railroads have not given the Central Inspection and Weighing Bureau the authority to show their freight rates thereon.

Q. You mean as far as the billing is concerned?

A. That is right.

Q. On the outbound?

[fol. 2215] A. That is right.

Mr. Enoch: I want to get in on this, too. Will you speak louder.

By Mr. Belnap:

Q. What do you mean, the Western Lines, have not given the inspection bureau the authority to show their rates?

A. At Chicago here we have a split territorial application; when we make shipments to the west we use Western Trunk Line tariff 331; I don't know what the ICC number is.

Q. That is the Western Transit tariff?

A. That is the Western Transit tariff under which the shipments move, providing for all the policing.

Q. And the western proportionals are made subject to the requirements of that transit tariff?

A. They are.

Mr. Enoch: Which one?

Mr. Belnap: Western Trunk Line—I think we should advise them the ICC number on that; will you get that?

The Witness: I will.

Mr. Enoch: You do not mean that the Denver & Rio Grande Western, or the Union Pacific, the Great Northern, or the Northern Pacific are members of this Central Inspection and Weighing Bureau, do you?

The Witness: Only the railroads shown as participating

carriers on page 2 of No. 413. I can call them off to you, if [fol. 2216] you want.

By Mr. Enoch:

Q. No; well, outside of the eastern roads, it is the Illinois roads to the west?

A. Well, the Rock Island is a western road; so is the St. Paul.

Exam. Taylor: What Mr. Enoch meant was roads reaching Illinois territory?

The Witness: Yes, that is all.

Exam. Taylor: Is that all?

Mr. Belnap: I offer exhibits 80 and 81.

Exam. Taylor: They may be received.

(Protestants' exhibits 80 and 81, Witness Rich, received in evidence.)

Exam. Taylor: Is that all from this witness?

Mr. Belnap: Yes, sir.

Exam. Taylor: We will recess five minutes.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen. Mr. Rich, I have one question as to these freight bills that you put in the record, on the barges.

The Witness: Yes, sir.

By Exam. Taylor:

Q. You show prepaid, and you described how you sent a check down to the country in payment of those charges.

A. Yes, sir.

[fol. 2217] Q. Would it be possible for you to furnish the canceled check, say in ten days, on the freight bills that you have been talking about on this record?

A. The canceled freight check?

Q. The canceled check in payment of those barge freight charges?

A. Yes; yes, we could.

Q. On the ones that you have put in this record.

Mr. Belnap: Just a typewritten copy of the canceled checks?

Exam. Taylor: Well, maybe he could put in the canceled checks.

The Witness: I will find out about that.

Mr. Belnap: I will be happy to have it in.

Exam. Taylor: Just the ones that we have been talking about here; exhibits 27, 32, 33, 34, and 35.

Mr. Belnap: Perhaps, Mr. Examiner, if he brought the canceled check over here,—he probably could do that tomorrow.

The Witness: Two of those exhibits date back to April, 1939; and we probably would have to plow through thousands of checks.

Exam. Taylor: If you have the date, you probably can get right to them. Will you make an effort to do that?

The Witness: Yes, sir.

[fol. 2218] Exam. Taylor: That is all.

(Witness excused.)

Mr. Belnap: While we are still on these general matters as to rates, Mr. Brown on several occasions has made statements as to how matters arose, and why certain things were done; and I think it would be helpful to the record if he were to go over the complete history of both the ex-lake and ex-river application, as a matter of background for the Commission. I would like to have him do that, with particular reference to the various wording in these notes, and how they have been employed.

Exam. Taylor: Well, now, he presented to rebut or change any of the testimony that has come in this case so far, or merely as an explanatory statement?

Mr. Belnap: I doubt whether there is any testimony yet about these notes, except Mr. Tannehill's statement that here is a tariff history.

Exam. Taylor: Any objection to that procedure?

Mr. Brown: I would like to have something to say about it, if you please.

Exam. Taylor: Certainly.

Mr. Brown: If it would be helpful to the Examiner in understanding what has taken place under these tariffs up to the present time, how they have been applied as to ex-lake and ex-barge grain, if the Commission wants that I am [fol. 2219] perfectly willing to give it, based on my knowledge of the history of the thing. But I am not offering my-

self as a witness, and I do not want to be a witness. I am perfectly willing to do whatever is helpful.

Mr. Belnap: I am perfectly willing myself to take Mr. Brown's statement of these things just as if it was sworn testimony, if that suits everybody else.

Exam. Taylor: I would like to hear if the respondents have any comments on the subject.

Mr. Enoch: I think if Mr. Brown takes the stand he ought to be called on behalf of some party, just the same as any other witness.

Mr. Belnap: I will be quite glad to call him, and be bound by whatever he says.

Exam. Taylor: Very well.

J. S. Brown, was sworn and testified as follows:

Direct examination:

The Witness: I understand I am going to explain what I know about the history east of Chicago, ex-barge and ex-lake rates; that, and nothing else.

Exam. Taylor: And to stand cross-examination.

Mr. Brown: On that, yes.

By Mr. Belnap:

Q. State your name.

A. My name is J. S. Brown. I am Manager, transporta- [fol. 2220] tion department, Chicago Board of Trade; and have held that position for over 25 years. Prior to that time I was General Freight Agent of the Illinois Central Railroad; and I think I am fairly familiar with the application of the rates east of Chicago, from Chicago to points east on so-called ex-lake and ex-river grain. And I wish to give, parenthetically, I see some tariffs have been set before me here, but I do not want to look at them or examine them unless it becomes necessary. There has never been, in my 25 years' experience in the Chicago Board of Trade, any question about the application of definite reshipping rates from Chicago on grain that came in to Chicago via lake. I think I am safe that if you go back to the original issue of Tariff 245-G, issued by B. T. Jones, present ICC No. 3356, you will find that there has been and still

is a definite expression that the reshipping rates therein will apply on ex-lake grain. The application will differ probably in two respects: first, the point of origin not being known, the rate that is in effect at the time that the grain originates by rail is not used in determining what rate shall be applied on the day the ex-lake grain is reshipped. In other words, on all the rail grain the reshipping rate in effect from Chicago that was in effect the day the grain originated, for example, in Iowa, is the rate that is applied on that grain, even though the rate from Chicago in the meantime has been changed. On ex-lake grain, becaues the original point of origin is not known, the rate in effect from Chi-
[fol. 2221] cago on the date of reshipment of the ex-lake grain govern.

Q. Reshipment from Chicago?

A. Yes. I would illustrate this way: if a cargo of ex-lake grain came in here before the 5 per cent increase took effect in March, 1938, and the grain was not shipped out until after March, 1938, it would take the higher rate. The other exception that comes to mind is this: that under the various notes describing the territory and the application of the rates there is provision of the one-factor through all-rail rates or combination of the rail rates must not be less than the local rate from Chicago in effect at the time the grain originated. Explain it this way: That the Chicago group today, which includes Kankakee and Milwaukee and Joliet and a few points, to New York, is 9½ cents higher than the reshipping rate, the reshipping rate being the same as the proportional rate, irrespective of the origin back of Chicago. Under the present application on all-rail traffic 8½ cents must have been paid into Chicago before you get the reshipping rate. If less than 8½ cents has been paid into Chicago, that difference must be made up before you can get authority from the transit bureau to apply the reshipping rate. Those two particular instances are the only ones I can remember that distinguish application of rates on ex-lake grain from all-rail grain.

Q. That 8½ cents minimum inbound, is that only in con-
[fol. 2222] nection with all-rail shipments?

A. Yes; it never has been used and never was intended to be used, and I don't think the notes require it to be used on ex-lake grain, or ex-water grain.

Q. The note that you refer to is that phraseology which reads that in no case shall the combination through rate to

and from the reshipping point be less than the local rate from the reshipping point to destination.

A. Yes, and that combination rate intends to and refers to combination of rail rates.

Q. And that has been the application of that language over a period running back to the beginning of your memory of it?

A. Yes, sir.

Exam. Taylor: Regardless of the tariff rule on the subject?

The Witness: I don't think there is any contrary rule, unless you may say that the ex-barge has a definite application of its own in this tariff 241-G. That is the Eastern Trunk Line tariff. Now, the Central Freight Association territory, the first agency tariff; that is, the tariff issued by Mr. B. T. Jones for account of all of the eastern carriers, did not take effect until sometime in June, 1935. The carriers have been working on that tariff, and I think the purpose was not only to pick up the individual tariffs, such as Mr. Tannehill spoke of, of the New York Central Rail-[fol. 2223] road, but to rather dovetail in with the new rates up to Chicago, Peoria, St. Louis, and Milwaukee that were prescribed by the Commission in 17000; those rates became effective July 1, 1935. The Commission made some changes in the rates that affect the so-called equalization, particularly as between Chicago and Peoria from northern Iowa. When the first issue of 535-A was being compiled, it was noticed by Mr. Benson and myself, and particularly by him because he watches the detail, that the application of the individual roads' tariffs was not exactly the same. There had been very little business moved; that is, ex-barge business moved up to the time we were discussing the new 535-A early in 1935. Occasion had arisen before that as to what was the application on barge grain coming to Chicago. It was a small amount; but a firm that is no longer in business raised the question as to whether under the application of the individual roads' tariffs he was not entitled to the reshipping rate applicable on Illinois traffic, because the traffic originated in Illinois. It is my recollection that some of the individual railroads agreed with the shipper that that was so. And the Bureau passed the billing on that basis. But when Jones compiled his new tariff he ap-

parently found this difference in the application, and it came to our notice it was going to be compiled; and we said that we want to know how you are going to do it. And the conclusion reached apparently was that they would treat all ex-water grain the same. And you have got your [fol. 2224] present——

Mr. Enoch: Did you say the conclusion apparently was?

The Witness: Yes, because it resulted in one application to cover all. I think Mr. Benson read this into the record: the caption is "Grain;" and in parentheses, "Northwest;" and the last item is prefixed by a small letter E in a circle, and it reads, "On shipments that arrived via boat lines at Chicago, Illinois, Kewaunee, Mackinaw City, Manitowoc, Menominee, Manistee, and Milwaukee." Now, that established for the first time a uniform application east of Chicago on barge grain and ex-lake grain, and was so accepted at that time by everyone that I know anything about who had anything to do with it. There has never been any question raised that that provision which I have just read did not cover ex-river grain.

Now, the carriers selected the highest rates, or rather the ex-Northwest rates for the ex-barge grain, just as they had previously been applying on ex-lake grain. In order to get unity, the shippers had to accept them; and so far as I know there was only one dissent to that among the Chicago shippers; and he is the same shipper I previously referred to, who is not now in business. That is all I have to say about the history.

By Mr. Belnap:

Q. He thought he still was entitled to the reshipping rate?

Mr. Enoch: What difference does it make?

[fol. 2225] The Witness: Because we had been getting it under the application of the individual road's tariff to Central Freight Association territory prior to the issuance of Jones' 535, he rather thought that we ought to fight for that application in the new tariff.

By Mr. Belnap:

Q. By individual tariffs, you have in mind issues similar to those shown in Mr. Tannehill's exhibit, as preceding the first agency issue?

A. Yes.

Q. Was that the application made under the New York Central tariff shown in Mr. Tannehill's exhibit?

A. Yes; the New York Central tariff was considered as affording reshipping rate, whatever it was, higher or lower, whatever it was from the Northwest on barge grain.

Q. By the New York Central Railroad?

A. That is acquiesced in by the Bureau, and approved by the Bureau.

Q. At the time that the New York Central operated under its individual tariff the note as shown on page 4 of Mr. Tannehill's exhibit 1, which provided for the application of the Northwest proportional on certain grain arriving via boat lines at Chicago, was limited, was it not, by the terms of the note to shipments arriving by boat which originated in a certain defined territory.

Exam. Taylor: You are still talking about Central Freight [fol. 2226] Association territory?

Mr. Belnap: Yes, I am still talking about Central Freight Association territory.

The Witness: Is Group 1 Chicago, do you know?

Mr. Belnap: Yes.

The Witness: Well, that was definitely restricted to what has been referred to here as ex-Northwest origins.

By Mr. Belnap:

Q. That is in connection with the rate applicable on ex-boat corn, to specifically state where that ex-boat corn had to come from, did it not?

A. Yes.

Mr. Enoch: Isn't that all in the exhibit?

The Witness: I want to be sure that you know what I am talking about; I am talking about page 4 of exhibit 1, Item 25-A Northwest, shown as effective May 1, 1924. And I would say under that, that was confined to grain originating in the northwest, Wisconsin being the first-mentioned state. That is not what I referred to; I referred to some other note that gave the reshipping rate on barge grain. Let me see if I have got the thing right: remember, it is a long while since I have seen the tariff. This is the kind of note I referred to which the Chicago shipper claimed he was entitled to have reshipping rate on barge grain, beginning about 1934. This appears on page 3,——

Exam. Taylor: Did you say 1934, or 1924?

[fol. 2227] The Witness: 1934. I never knew it to arise until at the 1934 call of barge men. This note appears on page 3, the note being designated as No. 15-A reshipping. I will only read part of it. This provides that the rates named on certain pages on grain in carloads are reshipping or proportional rates, applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of traffic and rates paid to the reshipping point and will apply only on such traffic when originating at points, except as provided for in Notes 20-A, which lower down is shown as trans-Mississippi River territory, and except as provided in Note 25-A, which is headed Northwest territory. In other words, this note was construed as excluding trans-Mississippi River and ex-Northwest application from Illinois barge grain and applying the reshipping rate, whatever it was generally known, as to grain originating in Illinois.

Q. And that led, as I understand it, to the application of a different rate on ex-barge grain than on ex-lake grain in that period?

A. During that period in 1935, but not by all carriers. Only some applied, as we understand it, the Illinois reshipping rates instead of the ex-Northwest rates.

Q. Then, did you for the Board of Trade insist to the publishing agent when he was getting out his new issue [fol. 2228] that the same rate whatever it might be, should be provided for ex-barge grain?

A. We did not exactly say that; but we wanted an ex-barge application uniform for all the roads east. That could not be had, because there was either a variation in the notes themselves or a variation in the way they had been applied by the railroads individually. And the easiest way for the roads was to throw the ex-barge in with the ex-lake and get a uniform application on both; and that is what exists today.

Q. That was done by Note 40?

Mr. Enoch: Wait a minute——

Mr. Belnap: That is what Mr. Brown contends was done by Note 40.

The Witness: And without dissent from anybody that I know; nobody except this one man who still wanted to hang

on with the reshipping rates; but we did not support him to the extent of having a row with the rails and perhaps get no rates. Now, Mr. Benson, you know, I think, called Mr. Schimmel's attention to a general application of these tariffs which particularly throws you into the exemption, a special application on river grain—yes, this is it: in 535-A, ICC 3300 there is a general application, aside from these notes 40 and 20, and so forth. I will read it——

Exam. Taylor: The exhibit is in the record.

The Witness: No, I am reading from the general appli- [fol. 2229] cation that apparently was overlooked by somebody.

By Mr. Belnap:

Q. You are referring to Item 5, as appears on page 92 of the tariff?

A. Yes, Item 5, application of proportional rates, which is a general application.

Q. I think that has been read in the record, Mr. Brown; that item was read in the record. It shows in substance certain things in general; then it excepts from it rates that are applicable on ex-river, ex-ocean and ex-lake traffic?

A. Yes, in the special application notice; now, tariff 245 ought to have something in it like that too; Note 35, page 105.

Q. That has not been read in the record; will you please identify the item and read it in?

A. I am reading now Item 35 in B. T. Jones' tariff 245-G, ICC 3356, naming proportional rates, among other rates from Chicago to Eastern Trunk Line territory and New England and Virginia cities. The effective date of this tariff is November 15, 1939; but this particular item I am familiar with, and it has been carried in this tariff quite a long while. This is general application of proportional rates: proportional rates as named herein which by their terms are limited in their application to traffic originating at specific points or territories, including rates which are published for application on traffic from beyond 'are applicable only when the entire through movement is performed [fol. 2230] by the rail carriers, or water and rail carriers under rates lawfully on file with the Interstate Commerce Commission or state commissions.' Now, here is the remaining note, separate paragraph: "The foregoing is not

to affect any rates now published carrying provision that such rates are applicable on ex-river or ex-lake traffic or on traffic forwarded by ocean from the port."

Mr. Enoch: Well, that is substantially the same as the previous Note 5, to which you referred?

The Witness: Yes, and that is the saving clause which gives us these special applications on water-borne grain brought into Chicago.

By Exam. Taylor:

Q. To Trunk Line territory?

A. Yes, sir.

By Mr. Belnap:

Q. A similar note to Central Freight Association territory?

A. Yes, sir.

Q. Is it not true, Mr. Brown, that you have to go to the notes to find anything that will pertain to ex-river traffic, as far as the rate application is concerned in these tariffs?

A. Oh, yes; and that item read calls attention to the fact that there are special provisions for ex-water grain rates.

Mr. Enoch: Now, may I ask what your point is there; do you say that because of this last sentence the foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex-river, ex-ocean or [fol. 2231] ex-lake traffic, nullifies the preceding reference and requirement that the proportional rates are applicable only when the entire through movement is performed by the rail or water carriers under rates lawfully on file with the Interstate Commerce Commission?

Mr. Belnap: I think it reads as an exception.

Mr. Enoch: Is that your point? I can read it; I may not read it right,—but is that your point?

Mr. Belnap: If I understand your question, it is.

Mr. Enoch: In other words, this does not require the inbound carrier to have any rates on file anywhere?

Mr. Belnap: On file with the Commission; that is correct.

Mr. Enoch: Anywhere?

The Witness: Oh, yes, on rail traffic, on rail and water traffic, it says.

Mr. Enoch: I am talking about ex-barge.

Mr. Belnap: The ex-lake traffic and the ex-river traffic, in other words, can enjoy the proportional or reshipping rate without the inbound rates being on file with the Commission, as I understand it.

Mr. Enoch: What significance do you attach to the word 'published' there?

Mr. Belnap: 'Published' means contained in the tariff.

The Witness: Published herein.

By Mr. Belnap:

Q. Mr. Brown, I would like to call your attention to the [fol. 2232] first portion of the present Note 40.

The Witness: What tariff?

Q. Of the Central Freight Association tariff.

A. Now, are you talking about the suspended one?

Q. No, no, no; I am just going to talk to you about the present——

A. I am looking at the original tariff, page 83; I am not looking at any supplements, where the language may have been changed.

Q. Very well; you will find in that first paragraph a requirement, do you not, that in no case shall a combination through rate to and from the reshipping point be less than the local rate from reshipping point to destination. Is that similar tc the language which was contained in the individual lines' issues going all the way back to the beginning of the ex-lake movement?

A. Yes, that provision has always been waived; and I think it is waived by that Item 5 that I read awhile ago. I know it has been waived.

Q. That has been considered not to apply to a combination of the lake charge versus reshipping charge——

Mr. Enoch: Just a moment; he said it was waived.

By Mr. Belnap:

Q. What do you mean by waived?

A. Waived by reason of the item that said no application applied. In other words, the provision for a local rate from [fol. 2233] a reshipping point as a minimum relates only to one factor all-rail rates, or a combination of rail rates; it has always be-so construed.

Q. Construed and applied to the actual business moving——

A. That is right.

Mr. Enoch: I want to object to any further interrogation along this line.

The Witness: I am giving you the history of it; that is all I am giving you.

Mr. Enoch: That is all you are intending to do, Mr. Brown; but you are telling him that people have construed these tariffs, and how you construe them.

The Witness: Well, I can say this; that if they had not been construed the way I stated, I would have heard about it a long time ago; there would have been an awful howl.

By Mr. Belnap:

Q. Will you turn to Note 20 in the Eastern Trunk Line tariff, Note 20 of Eastern Trunk Line——

A. I have it.

Q. How long has that note been in an agency issue; has it a similar history to the one you gave for Note 40 in the Central Freight Association tariff?

A. Oh, yes.

Q. That is the note that for several decades, or a similar note, has provided for the application——

A. That is the first part of it; I think this tariff I am [fol. 2233] looking at now has the suspended rule in it. It looks so to me anyway. Yes, this must have the suspended rule in it.

Q. What is that, F or G?

A. I have G here.

Q. You should have F.

A. Unless the original note is restored in a supplement here. I told you ahwile ago I was reading from the original tariff: but I happened to notice that this is not the old rule.

Q. Well, at page 4 of Mr. Schimmel's exhibit in that note when you get to the similar phraseology as regarding the combination, it specifies that rule does it not?

A. Let me read it—yes, as to the requirement for the minimum.

Q. And that is the difference, by those additional words, from the Central Freight Association Tariff Note 40?

A. Provided that is a true copy of the original rule.

Q. That is a photostat, Mr. Brown. I understand from you that the application of the Central Freight Association rule has been the same as if it had those words that Note 40 contains.

A. That is right—the words that Note 20 contains.

Q. Yes, that Note 20 contains. Now, in present Note 20, there is a provision that the rates are applicable on ex-lake shipments as of the dates such shipments leave the lake port; which lake port, as the note is applied, does that refer to?

[fol. 2235] A. Chicago, Milwaukee, or any other port from which there are proportional rates in the tariff to the Eastern territory.

Q. It is the port from which the rail shipment is made, is it not, and not the port where the lake movement originated?

A. Oh, no; no. Because this tariff is a part of that tariff containing proportional rates from Chicago, Milwaukee, and so forth to the east.

Q. Then, the next paragraph of that note?

A. These rates are applicable on ex-lake shipments as of the date such shipments are reshipped via rail from the lake ports named above.

Mr. Enoch: Are you trying to have Mr. Brown say something that it does not say?

Mr. Belnap: Here is an item, it simply says leaves the lake port; it does not say what lake port. I am trying to get what has been the application of the tariff, Mr. Enoch.

The Witness: That has been the wording for a good many years.

By Mr. Belnap:

Q. When it has come to applying those proportionals on ex-river business, what have the carriers done insofar as that matter of date is concerned?

A. Followed the same rule; apply the rate in effect at the date the shipment was made from Chicago.

Q. Are there any rates in that tariff, Mr. Brown, from Chicago which are shown in the rate columns themselves [fol. 2236] as ex-lake rates or are they simply shown as proportional rates?

A. No, there is no special ex-lake column in 245.

Q. How are the rates headed in the ex-lake, for instance Chicago to New York?

A. Well, Chicago is indicated by 100.

Q. Yes.

A. And opposite No. 100 you will find the 26-cent proportional rate from Chicago to New York.

Q. It is headed proportional?

A. No, it just says 100; the numeral 100 will be on the left, and running right from those will be rates to Baltimore and other places showing what the rates are from the station indexed 100; when you go to 100 in the index you will find that it shows proportional rate from Chicago, subject to Note 20, or Note 40, whatever it happens to be. And probably under Note 40 you will find 100-A, and that will be Chicago proper, and the rate will be 8½ cents under rates——

Q. Rates, however, are termed proportional in the note and in the tariff where the rates themselves are found?

A. Yes; I think I can find it right here. I am looking at page 20 of Jones' tariff 245-G; and Chicago, Illinois shows opposite New York Central Railroad in the bracket C proper, group 100, proportional, see Note 20, group 100-A. I had them reversed, that is all.

Q. And when we turn to——

[fol. 2237] A. When you turn to any of the rates you will find opposite 100 A are proportional rates, and opposite 100 are the local rates from Chicago. On page 121, which is headed Domestic Rates on Grain, opposite 100, which is the Chicago group proper, you will find that under the station New York the rate is 34½ cents. Opposite Group 100-A, which is the proportional rate, you will find that under the station New York is 26 cents.

Q. However, that page we find the rates themselves as headed simply domestic rates on grain?

A. That is right.

Q. Where that proportional is applied on a shipment which came in via lake, it is applied as an ex-lake rate, is it not?

A. That is right.

Mr. Belnap: That is all.

Cross-examination.

By Mr. Cole:

Q. The matter that you referred to last, you were talking about the application of the Trunk Line territory in the east.

A. He wanted to know how it is applied, the groups.

Q. The trunk line?

A. All trunk line, Virginia City.

Mr. Enoch: That is right.

Exam. Taylor: Is that all you have, Mr. Cole?

Mr. Cole: That is all.

[fol. 2238] Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Brown, when the increases went on the rates in March, 1938, did the rate thus increase eastbound out of Chicago, the proportional rate apply on a shipment that had come in over the river and have shown to have originated prior to that date?

A. Any grain that was in while the higher rates should have applied, if shipped after the effective date of the increase.

Q. Was that the practical application; was that what was done?

A. That is what should have been done, as I understand. I cannot say what was done; I do not handle the billing. I have troubles enough without it.

Q. Do you know what was done?

A. No, I don't know what was done.

Exam. Taylor: Any other examination of this witness? (No response.)

By Exam. Taylor:

Q. Mr. Brown, do these statements that you have made with respect to note 20 and note 40 practically throw out of the window that part of the rule that says that these rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission?

A. No, no, not by any means. All the transit rules is to provide for the policing, keeping of records, and sub-
[fol. 2239] mitting of the proper kind of inbound billing when you reship, but subject to what the rate is in the past.

Q. Yes, but we have got two rate rules in there that we have referred to previously on this record.

A. You mean 413-K transit rules.

Q. What have you to say as to Rule 61 of the transit tariff?

A. That rule cannot possibly change the value of the rate that is in the tariff. The first part of Rule 61 in the Chicago District transit tariff, B. T. Jones' Tariff 413-K, ICC 3204, reads as follows: "The through rate to be applied shall be the lawfully published rate through from the original point of shipment through to final destination in effect via the transit point at the time of the initial shipment from origin applicable to the commodity covered by the inbound billing which these rules permit to be matched against outbound shipment." There isn't a comma in that whole rule. It just means this: that whatever the rate is in the rate tariff, and whatever its application is that will be applied under this tariff. This transit could not possibly go into all of the ramifications and the exceptions that you will find in the rate tariff. Item 5, the part I read out of 535 Central Freight Association tariff it tells you that so far as the ex-river and ex-barge traffic is concerned, you do not have to comply with the same rules that you apply on the all-rail or all-water rates on file with the Interstate Commerce Commission.

[fol. 2240] Mr. Enoch: That is what you say.

The Witness: That is what the item says; and that has been so applied.

By Exam. Taylor:

Q. How about Rule 15 in this tariff?

A. Rule 15 is designated as the inbound charges, and reads as follows: "Shipments delivered to transit houses will be subject to full tariff rates of inbound carriers based on actual weights, subject to tariff minima." There is no complication in that rule, with the practice of recording either rail grain inbound or water grain inbound, because under Item 5 you are exempted from any such thing as that if there is no rate there.

Exam. Taylor: Is that all from this witness?

Mr. Enoch: May I ask one more question: Is this ex-barge grain Chicago in the elevator where it moves outbound in transit under the rules of the carriers?

The Witness: As long as it goes into that elevator it must be subject to the transit rules. If that transit operator wants to get the benefit of the transit rules. You will find somewhere in the transit rules that he has to make an application as a transit operator to operate certain houses. That may be 20 years old with some of these elevators. And he thereby agrees to abide by all of the rules, whether or not transit is necessary. Grain coming in by barge could go into an elevator and go out the next day, [fol. 2241] 30 days or 90 days; but we would still have to register—and when he loaded a steamer tell what billing he put against it. He is required to—otherwise he could keep inbound billing that would be valuable to him, which is not permitted.

Q. Do you find any tariff provision there which has to do with the requirement that in order for this ex-barge grain to engage an outbound proportional rate it must be in transit while in the elevator at Chicago.

A. Well, do you mean that a fellow could make use of a rate that he did not have any grain to put behind?

Q. No; let me ask you this: now, wheat comes in from Wichita and goes into an elevator at Kansas City, and six months later takes a proportional rate out to Chicago,—has had transit at Kansas City——

A. Yes.

Q. Now, when corn comes from Morris by barge into Chicago, and six months later goes out and takes the proportional rate to New York, has it had transit at Chicago?

A. Both has had transit at Chicago.

Q. The same type?

A. So far as the policing is concerned, yes; exactly the same kind of—except that the Wichita bill went into Kansas City, and when it came out of Kansas City it went over the Rock Island, it showed it came out of Wichita, and the date; so that man would know that the reshipping rate [fol. 2242] was that in effect at the time the car left Wichita. Now, I have already explained that the car comes in, the grain comes in by barge it can go into an elevator, and the rate the man pays is that in effect the date he offers his grain to the railroad.

Q. But you think they are two types of transit; and the transit, if any, at Chicago in connection with ex-barge shipments is only transit insofar as the policing provisions are concerned?

A. Oh, no; no. I said when it came in by barge and went out by lake there was really no transit involved, because no railroad is asked to do anything. But a shipper himself must be very careful to cancel off the amount of tonnage that he put on that lake vessel.

Q. Isn't that because he has a mixture of corn in his elevator; namely, corn that might have come in by truck, corn that might have come by rail, and corn that might have come in by lake, and corn that might have come in by Illinois river; that is the reason it has to be policed; if it were not for that, there wouldn't be any policing requirement there.

A. Oh, well, the policing requirement is to see that all the requirements are maintained;——

Q. Won't you say yes to that?

A. It is a transit bill; and this shipper elects to take out of that bill whatever he wants to take. If he takes it out of that bill and ships by lake, he is not asking the [fols. 2243-2244] railroads for anything;—if he takes out of that bill barge corn, offers it to the rails for eastern shipping, he has got to comply with the rules. And he surrenders the lake bill of lading; if he has 25,000 bushels and ships 15,000, he has 10,000 left.

Q. If he had an elevator into which he can only put in river grain and ships only lake, would there be any policing requirement?

A. No; but that fellow would not be in business very long. It is just kind of foolish to talk that way. I mean at a market like Chicago,——

Q. There is no harm in asking the question?

A. Oh, no; we have got lots of time.

Q. I want you to state the difference between transit at Kansas City and the transit at Chicago in those two illustrations?

A. None whatever, under the general rule.

Mr. Enoch: That is all.

Exam. Taylor: Any further questions from this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: We will adjourn at this time until 9:00 o'clock tomorrow morning.

(At 4:55 o'clock p. m., adjourned until 9:00 o'clock a. m., January 25, 1940.)

[fol. 2245]

Morrison Hotel,
Chicago, Illinois,
Thursday, January 25, 1940.

Before: R. G. Taylor, Examiner.

Hearing resumed at 9:00 o'clock a. m.

Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right, now, gentlemen, let's come to order.

A. M. Garrison, was sworn and testified as follows:

Direct examination.

By Mr. Dyche:

Q. Give your name and address to the reporter.

A. A. M. Garrison, special agent, freight traffic department, Pennsylvania Railroad, Chicago, Illinois.

Q. What has been your experience in rate matters, particularly in regard to grain traffic, Mr. Garrison?

A. I have been with the Pennsylvania Railroad 29 years. For the past 20 years I have been in the freight traffic department, handling rates on grain, also transit privileges on grain and other commodities.

Q. Are you familiar with the existing rates applicable on ex-barge grain east from Chicago?

[fol. 2246] A. I am.

Q. And are you familiar with the proposal——

A. I am.

Q. Before the Commission?

A. Yes, sir.

Q. Is the Pennsylvania Railroad in favor of the proposal?

A. Yes, sir.

Q. Yesterday did you hear Mr. Brown's explanation of the present existing tariffs and transit rules in connection with ex-lake and ex-barge traffic from Chicago to Official Territory?

A. I did.

Q. Will you state whether or not the Pennsylvania Railroad has based its interpretation on the same rules and tariffs, based its interpretation of the tariffs on the same rules referred to by Mr. Brown?

A. We did.

Q. Do you know whether or not the interpretation of the Pennsylvania Railroad was the same as that of Mr. Brown?

A. Yes, sir.

Q. I take it that these rules provided, according to the Pennsylvania's interpretation, which you stated was the same as Mr. Brown's interpretation, for the application of Northwest reshipping rates on ex-lake and ex-river grain?

A. Yes, sir.

Q. Now, when Jones' Tariff 535-A, ICC 2790 was amended to include——

[fol. 2247] A. That was——

Exam. Taylor: On what effective date?

By Mr. Dyche:

Q. I believe July 1, 1935?

A. 1935.

Q. Or June 28, 1935?

A. 1935.

Q. Is that right?

Mr. Belnap: In understood that the tariff to which you refer constituted an initial issue in so far as the publication of these rates is concerned, rather than being an amendment to that tariff.

By Mr. Dyche:

Q. That is the first time, as I understand it, when Jones' tariff brought in the rates on ex-river and ex-lake grain from Chicago and the individual rails' tariffs were cancelled, is that so?

A. That is correct.

Mr. Day: I object to that and move it be stricken. The tariff couldn't have brought the ex-barge grain into it because there was no such thing as a movement of ex-barge grain.

Exam. Taylor: In 1935?

Mr. Day: Started in 1935. These tariffs have continued as Mr. Tannehill's exhibits showed, much the same as 21 and 24.

By Mr. Dyche:

Q. Well, will you state what was done and what were the provisions in Jones' tariff 535-A, 2790, effective in June, 1935, and what was the intention of the carriers who, ac- [fol. 2248] cording to your understanding—at least from the Pennsylvania Railroad's standpoint, as to the meaning of that tariff?

A. Prior to the effective date of June 28, 1935, the reshipping and proportional rates from Chicago and western gateways were published in individual tariffs. Effective on June 28, 1935, the rates in individual tariffs were cancelled and became effective in Agent Jones' tariff referred to, which made a uniform application of rates for all carriers.

Q. From the Pennsylvania Railroad's standpoint, how was that tariff applied on grain originating at all sources?

A. The ex-northwest reshipping rates were applied on ex-lake, ex-river grain.

Q. Could you state in somewhat more detail the type of grain on which it applied with regard to the origins of the grain?

A. It applied on all the grain, covering the description of the grains in the tariff. It applied from Duluth, Superior, Minnesota. It applied from Canadian ports, Port Arthur, Port William. It applied from Georgian Bay ports; it applied from ports on the St. Lawrence River.

Mr. Day: I object to his statement.

Mr. Dyche: Let him finish.

Mr. Day: I object because the tariff is the best evidence, of what it contains, and I don't recall anything like that in the tariff.

Mr. Dyche: He is stating how it was applied as a practi- [fol. 2249] cal matter.

Mr. Day: I don't care how it was applied. I say that the best evidence of what the tariff provides is the tariff itself. There is no sense in this witness getting on the stand and reading into the record a lot of things that aren't there.

Mr. Dyche: He is stating how the tariff was applied, Mr. Day. If you don't——

Mr. Day: Well, I object to it.

Mr. Dyche: I submit that the testimony is entirely proper for its purpose.

Exam. Taylor: Mr. Brown yesterday put in considerable testimony as to how this operation was applied.

Mr. Day: Well, unfortunately I had to be absent while Mr. Brown was on the stand. I didn't hear the testimony.

Exam. Taylor: Under the circumstances, the objection is overruled. The witness may answer.

Mr. Day: Exception.

Exam. Taylor: Exception noted on the record. Proceed, Mr. Garrison.

The Witness: From the St. Lawrence River ports, also on grain imported via the St. Lawrence, Great Lakes routes through Chicago.

Mr. Enoch: May I have that last read? I didn't understand it.

(Record read.)

[fol. 2250] By Mr. Dyche:

Q. Now, at the time this tariff which you have discussed became effective and was established in June, 1935, was there any existing barge traffic of grain on the Illinois waterways?

A. There was barge traffic during 1934, and from the records of the Central Freight Association, it is shown there that consideration was given by the Central Freight Association General Committee to the rates on this barge traffic. The report has been read in the record of their handling and of their interpretation of the tariff.

Q. Was it the Pennsylvania Railroad's understanding and intention that this tariff should apply on ex-river ex-barge grain at Chicago, moving eastward to Official Territory?

Mr. Day: I object to the question on the ground that——

The Witness: It was.

Mr. Day: Just a moment, when I make an objection don't be so quick to answer. On the ground that the Pennsylvania's intention had nothing whatever to do with the terms of the tariff.

Exam. Taylor: Of its own tariff?

Mr. Day: With the tariff. The terms of the tariffs speak for themselves. Now, what the Pennsylvania say now that they may have intended is utterly irrelevant and unimportant to this hearing.

Mr. Dyche: I think the Commission is interested in what [fol. 2251] was the understanding of a railroad that was a party to this tariff as to how it was not apply on the traffic then existing, and which was potentially a very strong force.

By Exam. Taylor:

Q. Did you participate in any of the discussions that took place?

A. We did.

Q. In connection with this traffic?

A. We did. All the Chicago lines.

Mr. Day: The Examiner's question, if I may suggest, is whether you did.

The Witness: I did.

Exam. Taylor: Objection overruled. The witness may answer.

Mr. Dyche: I believe the answer was on the record, is that so?

Exam. Taylor: The answer was yes.

The Witness: It is on the record.

Mr. Belnap: Might I have the question read and the answer?

Exam. Taylor: He has answered it now.

Mr. Belnap: The question is, did he participate?

Exam. Taylor: Read the question.

(Question and answer read.)

By Mr. Dyche:

Q. Have you any further statement you would like to make at this time, Mr. Garrison?

A. I haven't any further statement than adopting the tes- [fol. 2252] timony and the understanding of Mr. Brown——

Exam. Taylor: Now, just a second. Off the record.

(Discussion outside the record.)

The Witness: I will concur in his testimony; I will put it that way.

Mr. Dyche: Thank you.

Exam. Taylor: Is that all?

Mr. Dyche: That is all.

Exam. Taylor: Any questions by respondents?

Mr. Day: You had better ask the people on the same side of the case first. That is what we have been doing right along.

Exam. Taylor: The Pennsylvania is a respondent, one of the respondents.

Mr. Day: I don't think it takes much to see what is behind the scenes here.

Mr. Dyche: Are you making necessary remarks or unnecessary remarks, Mr. Day?

Mr. Day: I say that the Pennsylvania here is testifying for the protestants, and the protestants should question them before cross examination.

Mr. Dyche: Now, Mr. Garrison——

Mr. Day: He is certainly a hostile witness.

Mr. Dyche: Mr. Garrison said we were in favor of the proposal.

Mr. Day: Sure, I know.

[fol. 2253] Exam. Taylor: Do you wish to reserve your cross examination?

Mr. Day: I would like to hear from the other protestants first.

Exam. Taylor: All right. Cross examine.

Mr. Belnap: Before I ask, might I get clear on the positions of the parties, Mr. Examiner?

Exam. Taylor: I would like to get clear myself.

Mr. Belnap: I understood that Mr. Cole had entered an appearance for all protestants, correct?

Mr. Cole: Correct.

Mr. Day: I thought he appeared for respondents.

Mr. Belnap: Well, respondents and protestants.

Mr. Day: Don't tell me he is going back on me too.

Mr. Belnap: I understood Mr. Cole entered an appearance for all of the respondents collectively, and I haven't heard Mr. Cole on this record make any statement which indicates a contrary position to that stated by Mr. Garrison.

Now, if I am misinformed as to that, I would like to know.

Mr. Day: I don't think there is any need for Mr. Belnap trying to stir up any more dissension in the railroad ranks than there is now.

Mr. Belnap: I understand Mr. Day is here for the New York Central, but I would like, if the Examiner will permit me to, to address Mr. Cole directly as to whether or not he, [fol. 2254] speaking for respondents collectively, takes any position in this case which is contrary to that stated by Mr. Garrison.

Mr. Cole: Mr. Examiner, this is a very neat point, and here is the way the thing rests upon the record. It is true that when Mr. Day and the whole crowd of us began on this case, all of us on the railroad side represented respondents, and we still do. There is no question about that.

Exam. Taylor: Including Mr. Dyche and Mr. Garrison?

Mr. Cole: Including Mr. Dyche and Mr. Garrison, of course, yes.

The Witness: Yes.

Mr. Cole: Now, the issue that I am trying and the issue that I am interested in and the only issue that I am interested in is the proposed change in this tariff wording which has to do with a prospective application of tariffs. I have noticed that during our hearing, we have gone into quite a number of factors that I could not at the time appreciate their application to the issue that we had here. I still don't. However, I appreciate that the Commission was anxious to get everything in the way of information in the record.

Exam. Taylor: That had a bearing on the situation.

Mr. Cole: That had a bearing on any of the matters in there, yes; so that I did not interpose a lot of technical objections to going into that, because I know that that is usual in these cases. However, there may be minor differences [fol. 2255] among the various respondents to nice technical questions that have to do—now, I want to make this clear—that have to do not with the issue that I am sent here to try but to other problems that may have been involved here, you see, and I would like to preserve—and I hope that I may continue to preserve—as much concert among the respondents as it is possible to do so, and I hope that we not be unnecessarily drawn out in dissension, if it is so clear that the dissension pertains to a point that I am not here trying, that I haven't been sent here to try.

Now, I hope that everybody, protestants and respondents that I am sent here to represent, can see why I ask that. I think the Examiner can see why I ask that. I think it is unnecessary.

Mr. Day: Now, if the Examiner please, may I make this statement? If Mr. Garrison is appearing here for the respondents, then he must be——

Mr. Dyche: He has told us he is appearing—well, go ahead and finish your statement.

Mr. Day: All right, you go ahead.

Mr. Dyche: He has said that he was appearing for the Pennsylvania Railroad, one of the respondents.

Mr. Day: Is that all you want to say?

Mr. Dyche: Yes.

Mr. Day: Please let me address the Examiner. If Mr. Garrison is appearing here to testify for the respondents, [fol. 2256] then perforce he must be testifying in rebuttal of the testimony that has just been concluded by the respondents. Is that the situation or is he appearing here, as I surmise, to bolster up the case of the protestants? If he is here for the protestants, then certainly the other protestants' counsel should examine them before cross examination by adversary parties.

Mr. Dyche: He is not here for protestants, in answer to your question.

Exam. Taylor: Mr. Dyche, just a minute. Let Mr. Day conclude. Is that all?

Mr. Dyche: I thought he had concluded.

Mr. Day: That is the situation. Whether the protestants had rested their case, as I would assume they had, or else it wouldn't be the time for respondents to go on; if they hadn't rested their case, then this is still certainly part of the protestants' case. Now, in the interest of orderly procedure, it seems to me that the testimony of Mr. Garrison is hostile to the respondents' case. If it is, then certainly the other parties on the other side ought to examine him first.

Mr. Belnap: Well, before examining, might I say one thing, please. I think in so far as protestants insist we have got a case here, that this testimony is in support of protestants' position; and I am perfectly happy to ask some addional questions relating to the matter as to what the present application of rates is.

[fol. 2257] Mr. Dyche: As far as we are concerned——

Mr. Belnap: May I say, the thing I would like to inquire of Mr. Cole, which he hasn't yet indicated his position, as to whether or not he agrees with me that we do have a lawsuit within the Commission's jurisdiction, in that the respondents propose to apply a different rate in the future on exbarge grain than is presently applicable thereto. Now, unless that is the respondents' position, they are contending that we are trying something over which the Commission has no jurisdiction.

Mr. Cole: Oh, no.

Mr. Belnap: Because the Commission obviously has no jurisdiction, if there is no change in rates under an I & S order. I think I am right in that.

Mr. Day: The Commission has repeatedly passed on matters of tariff clarification and simplification.

Mr. Belnap: Certainly, but if a lawsuit which Mr. Cole says he wants to try and I want to try relates to the future, then it can only be because there is a change in the application of rates.

Exam. Taylor: Just a minute, now.

Mr. Belnap: That is the one I would like to inquire——

Exam. Taylor: There is no use going off at a tangent in this thing. This case is a proposition by certain respondents to modify a tariff or the manner of applying proportional and reshipping rates. The respondents are here in [fol. 2258] justification of that change.

Mr. Belnap: I so assume, Mr. Examiner.

Exam. Taylor: That is all we have.

Mr. Cole: Yes, sir.

Exam. Taylor: Now, all these other matters are collateral.

Mr. Belnap: And I understand Mr. Cole agrees with that statement the Examiner just made.

Mr. Cole: Absolutely, 100 per cent.

Mr. Belnap: That makes us have a lawsuit which is subject to the Commission's jurisdiction, and I am willing to proceed.

Mr. Day: May I make a statement of my position?

Exam. Taylor: Off the record.

Mr. Day: I would like to have it on the record, unless Mr. Belnap's statement and Mr. Cole's are eliminated. My position is that the——

Exam. Taylor: Don't take this, Miss Reporter.

(Discussion outside the record.)

Mr. Cole: May we have a five minute recess?
Exam. Taylor: Yes, a five minute recess.

(Recess taken.)

Exam. Taylor: Proceed, Mr. Belnap.

Cross-examination.

By Mr. Belnap:

Q. Mr. Garrison, exhibit 19 introduced by the Chicago Board of Trade, shows that the receipts of grain in this [fol. 2259] market by Illinois waterways, beginning with 1933, 137,000 bushels having arrived that year, 1,154,000 bushels in 1934 and 1,554,000 in 1935. Does that refresh your recollection to the extent you can say as to whether you knew there was such a movement in the market?

A. I would accept that statement of a movement of grain from the river. I haven't any billing before me, moving out in the Pennsylvania Railroad at any time. I can only recall that during that period or during that time is when the barge grain first began to appear at Chicago for reshipment.

Q. And prior to the publication of Jones' Tariff ICC 2790 on June 28, 1935, I understand that in so far as CFA Territory is concerned, the rate application for proportional reshipping rates was contained in the individual line's issue?

A. That is correct.

Q. You heard Mr. Brown testify that as of that prior period, there was considerable question as between individual carriers as to which proportional rate was properly applicable to grain?

A. That is correct.

Exam. Taylor: And Mr. Garrison also stated that there wasn't entire uniformity.

Mr. Belnap: That is right.

Exam. Taylor: Of the tariff rules covering the subject.

By Mr. Belnap:

Q. In individual issues, they differed, did they not, in their wording?

[fol. 2260] A. That is correct.

Q. Your tariff, I don't believe, is shown in Mr. Tannehill's exhibit 1. That rests on a New York Central tariff.

A. I believe so.

Q. And was this varying interpretation between individual lines of their tariff a matter which received considerable attention in the grain trade and between the grain trade and the railroads in that period?

A. It did, and that will be shown by the Central Freight Association matter read into the record of January 3-5, 1934, which had been given consideration before that time.

Q. It was given consideration at that time because there was a movement, was there not?

A. There was a movement, and as to the application of the Illinois reshipping or the northwest reshipping rates.

Q. That was the controversy, was it?

A. That was the principal controversy at that time. Some of the roads' tariffs were interpreted to reshipping rates; others the northwest rate.

Q. And the reshipping rates are the ones which, by these individual lines' tariffs, were made applicable on grain other than from the northwest and other than from the T M Territory?

A. That is my understanding. Not with the Pennsylvania Railroad. We applied our northwest reshipping rate under our individual issue.

[fol. 2261] Q. Do you happen to have the tariff reference of that individual issue?

A. I have not.

Q. Was there at that period, and this is prior to the Jones' tariff, a general agreement, however, that either the reshipping or the northwest proportional would be applicable on the ex-barge grain?

Mr. Enoch: Just a minute, I object to that.

Exam. Taylor: Read that.

(Question read.)

Exam. Taylor: Mr. Belnap; I think that conference has indicated that there wasn't. They wanted to get together and that was the reason for the conference.

Mr. Belnap: I withdraw that question. I don't understand, Mr. Examiner, that at that time there was—well, I will take it back. I will take it all out, because that is a little too controversial.

By Mr. Belnap:

Q. Were you present at those meetings in January, 1935, as to which Mr. O'Connor read minutes into the record?

A. The meeting of January 23, 1935, shows the representation of the Pennsylvania Railroad as being F. W. Nash and A. M. Garrison.

Q. You are the Mr. Garrison that refers to?

A. I am the Garrison that refers to.

[fol. 2262] Q. You were at the earlier meeting about a week preceding that?

A. I would say at most of them, if not all of them.

Q. Now, following those meetings, when the carriers made certain records as to their views in general and as to their individual views, was there any effort on the part of the carriers generally, cooperating with Mr. Brown of the Board of Trade, to work out something definite?

A. At the time——

Q. And what took place. Just tell it in your own way.

A. At the time that the individual tariffs were cancelled, the committee handling grain rates handled these matters with the Board of Trade and with the grain shippers in Chicago, and it was an understanding, I would say with all of them, that these rates would be applied and it would be the northwest rate.

Q. Now, when Note 40 in Jones' tariff was first published on June 28, 1935, Jones' ICC No. 2790——

Mr. Enoch: Will you refer to that by exhibit number?

By Mr. Belnap:

Q. Yes, that is on page 4 of exhibit 1. The tariff reference is there. The note 40, I think, is contained over on page 6 of that exhibit. Did the carriers endeavor to select language in that note which would carry out the intent you have just expressed?

Mr. Enoch: Just a moment, I object to that. Now, as I understand——

Mr. Belnap: They may not have accomplished it, Mr. [fol. 2263] Examiner. I want to know whether that is what they tried to do.

Mr. Enoch: It doesn't make any difference whether they accomplished it or not. The Commission will determine that. And as I see this situation, the only subject matter

about which proper inquiry may be made of Mr. Garrison is what the carriers did, in an effort to show what a practical construction of the tariff they compiled was by them.

Mr. Belnap: I think, Mr. Examiner, I am entitled to have that question answered just as asked. This man was on the committee.

Exam. Taylor: Will you agree to this, Mr. Belnap, that regardless of what they said, in the final analysis the interpretation of those tariffs is the only question before the Commission?

Mr. Belnap: I say that is one of the most minor questions before the Commission. I think the future matter is the thing of importance here, but I think we can't have a lawsuit about the future unless we settle what is the present, and that is the only reason I go into it at all.

Exam. Taylor: In order to decide what is the present, the Commission has to interpret the tariff, does it not?

Mr. Belnap: Precisely. I appreciate that, sir.

Exam. Taylor: And I can't see that it would be very helpful, if Mr. Garrison was to go right along with you and say, why, yes, we tried to make this thus and so, if they [fol. 2264] didn't accomplish that in the tariff that was published.

Mr. Belnap: That is true, but that is a preliminary question too——

Exam. Taylor: I don't see where it would help any at all.

Mr. Belnap: That is a preliminary question, Mr. Examiner, to finding out what they did as a physical choice of language, to accomplish that purpose.

Exam. Taylor: You may answer it for such value as it may have.

The Witness: Will you read the question, please?

(Question read.)

The Witness: They tried to make rules and use proper language in the rules to accomplish that. This was explained fully in Mr. Brown's statement as to the various items and the rules in conjunction with Note 40, which was particularly Item No. 50, page 92, upon which the carriers based their interpretation.

Mr. Enoch: Just a minute.

By Mr. Enoch:

Q. Is that right, in Jones' 535-A?

A. Yes.

Q. Page 92?

A. Yes, that is in the present issue. It is in 535-A, ICC 3300, Item No. 5, page 92.

By Mr. Belnap:

Q. Since the date of the first publication of Jones'—of Note 40 in the Jones' tariff which you mentioned and [fol. 2265] throughout the succeeding issues, has that northwest proportional been applied by your line and by the carriers, if you know, to grain originating in the territory described as northwest, for the purpose of rail rate application as well as to grain—and which grain came to Chicago via lake—as well as to grain coming to Chicago via lake from Georgian Bay ports, from Lake Erie ports and import grain through the St. Lawrence waterways, grain via barge from Kansas City to Chicago and grain from Illinois via barge to Chicago?

Exam. Taylor: Hasn't he already answered that? Wasn't that his testimony?

Mr. Belnap: He hasn't covered all of them, Mr. Examiner. He hasn't mentioned Kansas City and he hasn't mentioned Lake Erie ports, if my notes were correct, and I was trying to ask one all-inclusive question to get them all in.

Mr. Enoch: Neither has he gone into the question of what kind of a barge brought it into Kansas City and——

Mr. Belnap: I will ask him that.

Mr. Enoch: And what kind of a boat brought it into Georgian Bay ports and other ports, and what kind of a carrier was it brought it in from the Illinois River.

The Witness: I can only speak for the Pennsylvania Railroad, and the northwest rates were applied on that traffic. If there were any moved or any billing applied against outbound rail shipments——

[fol. 2266] By Mr. Belnap:

Q. And do you know, Mr. Garrison, as to the Pennsylvania Railroad, you have handled ex-water grain out of Chicago which came in from all those various origins?

A. I couldn't say definitely. We would handle grain if it was offered, yes. I haven't seen the billing. I know there has been ex-barge billing applied. I know there has been ex-lake billing applied; but from Kansas City, I couldn't say definitely about that. And I know that there has been ex-Argentine and ex-African corn billing applied.

Q. You do know that?

A. I do know that.

Q. In CFA Territory. Now, as to the type of vessels which brought it into Chicago on the lakes, what do you know about that?

A. I know nothing at all.

Q. On the Illinois River, from Illinois, do you know anything about that?

A. I don't believe I have even seen a barge that I could identify as to hauling or handling grain.

Q. What about grain from Kansas City via river?

A. I have no knowledge of that equipment.

Q. In order to determine on behalf of the Pennsylvania what is the correct application of rates, have you felt it was necessary to look into hat situation, either as to the inbound movement on the lake or the rivers?

A. Not necessarily, because the application of the tariff [fol. 2267] doesn't define or describe any type of boat or a barge.

Q. Do I understand that as a respondent in this proceeding, you appear here in support of a change in the rates applicable on ex-barge grain brought to Chicago by carriers who have no rates on file with the Commission?

A. Be specific.

Exam. Taylor: It is ex-barge grain?

Mr. Belnap: Ex-barge grain.

The Witness: I would like to read that; I didn't quite get it.

Exam. Taylor: Read the question.

(Question read.)

The Witness: We do.

Mr. Belnap: That is all I have.

Exam. Taylor: Mr. Macaulay?

Mr. Macaulay: No.

Mr. Belnap: There is one other matter that I wanted to ask Mr. Garrison about which isn't directly connected with

his direct, and that is the situation at Toledo; if I may do so, Mr. Dyche?

Mr. Dyche: I have no objection.

Mr. Cole: I do.

Mr. Belnap: I could simply call him for my own witness. I am perfectly willing to have him in that status, Mr. Cole.

Mr. Cole: Well, if you insist to that extent.

[fol. 2268] Mr. Belnap: I will be bound by his testimony. It is not cross-examination.

Mr. Enoch: I understand you are willing to be bound by all the testimony he has given up to date.

Mr. Belnap: I am always bound by the truth, Mr. Examiner.

By Mr. Belnap:

Q. I show you Agent Jones' Freight Tariff 245-G, ICC 3356.

Exam. Taylor: And the effective date?

By Mr. Belnap:

Q. Effective November 15, 1939. I call your attention to page 181 of the tariff. Will you state the character of rates carried on that page of the tariff and how they are headed?

Mr. Cole: Just a minute, I would like to interpose an objection to going into the Toledo situation unless Mr. Belnap will explain to us in what way that would have an effect upon the interpretation of the matters we have before us, going through Chicago. I think we are getting away out of this realm. We are just getting worse and worse on this, getting away from the issue here.

Mr. Belnap: Well, we have Toledo rates in here for matters of comparison, Mr. Examiner, and I want to show the manner in which those rates apply, according to the tariff, and I was going to do it through some witness. Mr. Garrison, as I understand, is familiar with that grain situation in Toledo and Chicago and I want to do it through him.

[fol. 2269] Exam. Taylor: Inasmuch as it is in the record, I think it should be explained.

The Witness: The page cited publishes ex-lake—(export)—rates on corn from Cleveland, Detroit, Irondale, Rossford, Sandusky and Toledo.

By Mr. Belnap:

Q. To what points?

A. To Baltimore, Maryland, Boston, Massachusetts, New London, Connecticut, Newport News, Virginia, New York, New York, Norfolk, Virginia, and Philadelphia, Pennsylvania.

Q. Now, do those rates published in that page include elevation charges?

A. They do not.

Q. That is specifically provided for in the page, is it not?

A. Yes.

Q. The rates are net rates. Now, directing your attention to the rates from Toledo to Baltimore which are shown in a rate exhibit in evidence in this record. What is the rate published from Toledo to Baltimore, first, in connection with the Pennsylvania, and then in connection with the New York Central?

A. 13 cents in connection with both lines and all Toledo lines.

Q. And to what note is the application of those rates made subject?

A. To notes—subject to application of——

Q. No, this.

A. Notes 194—pages 194 and 195.

[fol. 2270] Q. And what are the numbers of the notes on those pages which govern the application of the rates via both the Pennsylvania and the New York Central?

A. One.

Q. Will you please turn to Note 1, read the heading over that section of the tariff.

A. "Explanation of notes, in connection with ex-lake and reshipping (export) rates."

Q. "Export" appears in parentheses?

A. It does.

Q. Now, will you read Note 1.

A. Note 1. "Where reference is made to this note, the ex-lake grain or grain product rates will apply only on grain or grain products which arrive at Cleveland, Ohio, Detroit, Michigan——"

Mr. Cole: Just a minute, just a minute now. Now, if the Examiner will bear with me——

Mr. Belnap: Can't we read it first?

Mr. Cole: No, you can't read it first; you have got it in the record then. This note applies not only in conjunction with the application of rates at Toledo which we started out to define, but this note is a common note that applies to various rate situations at a number of other points. They throw it all into this one note. Now, I don't think it is fair to read a common note covering the Toledo application unless we get the foundation and the background covering [fol. 2271] the inbound application at every one of those other points, because they don't apply the same outbound. Do you understand what I mean?

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: "Where reference is made to this note——"

By Mr. Belnap:

Q. This is quoted, now. Let's get it clear. You are going to quote the note?

A. And leave out all those others.

Q. Excepting that you are going to leave out all the points named in the note as origin points except Toledo?

A. That is right. "Where reference is made to this note, the ex-lake grain or grain product rates will apply only on grain or grain products which arrive at Toledo, Ohio, * * * via lake; also on grain products milled from grain which arrive at the ports via lake. The ex-lake rates covered hereby are applicable as of the date shipments leave Toledo, Ohio," and underline that as a change, because it refers to other points.

Exam. Taylor: Just one question.

Mr. Belnap: I want the rest of the note read. He hasn't completed it.

The Witness: "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission."

By Exam. Taylor:

Q. Now, there is nothing in that note that indicates that these are proportional rates?

[fol. 2272] A. Only by ex-lake.

By Mr. Belnap:

Q. And reshipping?

A. And reshipping. And this is the application for these rates on ex-lake grain.

Q. Now, Mr. Garrison, will you tell us what is the tariff carrying the transit rules and regulations on file with the Commission to which that note is subject?

A. The present effective tariff is Agent Jones' Tariff 340-G, ICC 3240, effective March 10, 1939.

Exam. Taylor: Now, are you going to have him read specific rules in there?

Mr. Belnap: The two that you called my attention to in the Chicago tariff.

Exam. Taylor: Are they the same?

Mr. Belnap: He can say that. They are identical.

Exam. Taylor: Put it that way, then.

By Mr. Belnap:

Q. There has been reference on this record, Mr. Garrison, to a number of the rules in the Chicago transit tariff, some of them relating to simply policing requirements, but specific reference has been made to rule 15 headed "Inbound charges", and rule 61, which is in two parts. The top part of it is headed "Rates." Are there identical rules contained in the transit tariff governing the application of the ex-lake and reshipping rates from Toledo?

By Exam. Taylor:

Q. Or would you say that they are substantially the [fol. 2273] same?

A. Substantially the same. To say identical, I would have to read both of them. But the rules covering transit privileges at the lake ports are substantially the same in all respects.

By Mr. Belnap:

Q. Now, would you give the number of the note in the Toledo transit tariff which corresponds to note 15 in the Chicago tariff?

A. I would have to compare this. The inbound charges under note 20 of Agent Jones' Tariff ICC 3240.

Q. Then will you give the number of the note which relates to note 61 of the Chicago tariff and deals with the through rate to be provided on transit grain and provide it shall be the lawfully published rate from point of origin and so forth?

A. Paragraph A, rule 60, page 5 of Jones' Tariff ICC 3240.

Mr. Belnap: That is all.
Exam. Taylor: Mr. Macaulay?
Mr. Macaulay: I have nothing.
Exam. Taylor: Mr. Brown?
Mr. Brown: No.
Exam. Taylor: Mr. Day?
Mr. Day: Yes, sir.

By Mr. Day:

Q. Mr. Garrison, you made the statement that prior to the time these provisions for application of reshipping rates were put in the Jones' tariff, each line had its own individual issue?

[fol. 2274] A. Correct.

Q. Then you said that those several tariffs contained conflicting provisions with respect to the application of reshipping or proportional rates?

Exam. Taylor: They weren't uniform.
The Witness: Mr. Day——
Exam. Taylor: I don't believe he used the word "conflicting," Mr. Day.
Mr. Day: He said they varied.
Exam. Taylor: I think he said they were not uniform, that is the term he used.

By Mr. Day:

Q. Now, Mr. Tannehill presented his exhibits Nos. 1 and 2, quoting from tariffs of the Lake Shore and Michigan, Southern and New York Central Railroad, and he said that those tariffs were typical of the tariffs of the other lines. Now, I wonder if, for the Pennsylvania, you will state for the record what the difference was between the Pennsylvania tariff and the New York Central tariff in effect prior to the compiling of all of the railroads' issues into this agency tariff?

A. I haven't even the tariffs before me. I at this time could not make any statement as to the difference. The only thing that I am following here was some CFA records where it was stated at a conference of the lines; that there was some question as to the New York Central tariff being applicable at that time.

[fol. 2275] Q. That is why it becomes important to determine what the Pennsylvania tariff provided in the way of a difference.

A. That was determined by the General Committee or members of the General Committee at their many meetings, and their decision is the one that we are guided by.

Q. Now, the Pennsylvania tariff, then, was different. Was the tariff of the B. & O. also different?

A. I cannot answer it, I do not know.

Q. Was the tariff of the Erie different?

A. I could not answer as to any of the tariffs at this time.

Q. Then you didn't mean what you said when you testified on direct that the tariffs weren't uniform? As a matter of fact, you don't know?

A. I am taking that as a matter of record of the association lines.

Mr. Dyche: He testified he was present at these meetings. That was brought out.

Mr. Day: If you want to make an objection go ahead, but don't interrupt me unless you want to make an objection to the Examiner.

Mr. Dyche: I think it is an unwarranted question, in view of the prior statement.

Mr. Day: This is cross examination. My recollection of what the witness stated was that the tariffs of the several lines were not uniform. Now I am trying to get some in-

[fol. 2276] formation from the witness in amplification of that statement.

By Mr. Day:

Q. Now, as I understand it, you say that you have no information on that subject except in the minutes of this meeting of January 18, 1935, which were read into the record here, that it was stated that the New York Central tariff was different. Is that what you now say?

A. That is exactly what I am relying on right now.

Q. That isn't what the minutes said, was it? The minutes said the New York Central tariff has to be modified to conform to the provisions generally provided for in the other CFA roads' tariffs?

A. That is exactly that, and I would take from that minutes there that there was some question as to the New York Central tariff, and there was one of the reasons that these reshipping and proportional rates were put in an agency issue, was to remove these so-called conflictions, if any, and make a uniform application for all carriers.

Q. But as to what the tariffs actually contained, you have no knowledge?

A. Not at this time, except I know that at the time and since that time, that our tariff has been interpreted to apply the northwest rate on ex-lake and ex-barge grain.

Q. Now, since your testimony does contradict the testimony of Mr. Tannehill in respect to these tariffs, I wonder if you would mind furnishing for the record the similar [fol. 2277] provisions of the Pennsylvania tariff in effect prior to the taking effect of this agency tariff?

A. I am not accepting the statement that my statement conflicts with Mr. Tannehill's. I am only saying that the carriers interpret the tariffs to apply this, which Mr. Tannehill made a direct statement on the stand.

Q. Mr. Tannehill did make the statement that the provisions of the New York Central tariffs and the provisions of the Lake Shore tariffs which preceded them were typical of the tariffs of all of the CFA lines. You dispute that?

A. I am not disputing anything.

Q. You are not disputing it?

A. No, I am not disputing it.

Q. Is the New York Central typical or isn't it?

A. I am not saying; I don't know today. That has been five years ago. I am taking it from the record of the association.

Q. Now, Mr. Garrison, you have been in conferences and conversations with protestants throughout this hearing, have you not?

A. I have talked with them, yes. I have got friends.

Q. And with respect to this business that is moving off the barges by rail to the east, your company is getting the great share of it, isn't it?

A. I can't tell you what our company is getting.

Mr. Dyche: I will object to any further questioning on that ground.

[fol. 2278] The Witness: I will answer it.

Mr. Belnap: I submit this shows the interest of the witness.

Mr. Dyche: How much of the traffic we are getting is not involved in this proceeding in any respect whatsoever.

Mr. Day: It shows the interest of the witness in this case.

Mr. Dyche: I have told you the witness is testifying for the Pennsylvania Railroad as a respondent.

Mr. Belnap: I should assume, Mr. Examiner, the witness would tell the truth, whether he got any traffic or not.

Mr. Day: I assume he would. That is why I am asking him.

The Witness: I hope I do and that is the reason I am on the stand.

By Mr. Day:

Q. And your truthful answer to my question is that you don't know what the Pennsylvania is getting?

A. I have no knowledge. My department is entirely separate from any solicitation force. As far as concern many of these fellows, I have never seen them.

Q. That is your truthful answer?

A. That is a truthful answer. I have talked with them and everything else and I hope I continue to talk with them.

Exam. Taylor: Is that all the cross examination of this witness?

Mr. Enoch: I would like to ask some.

[fol. 2279] Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Garrison, this item No. 5 in freight tariff 535-A to which you previously referred is the item which you say changed the tariff situation on or about January 1, 1935?

A. Used in conjunction with all the other rules.

Q. What other rules?

A. Well, the rules that have been referred to. I believe it was rule 20 of tariff—well, 535-A. I can't remember the ICC number.

Q. I think item 5 was the piece de resistance that really put it over?

A. That was the one that Mr. Brown explained yesterday and was the understanding between the railroads and the shippers as to the interpretation of rules as to the application of northwest rates on this traffic.

Q. That is the principal item, in your opinion?

A. That is with item 20, yes.

Q. That is——

A. With item 20 and all the other items and rules in the tariff.

Q. Were items 20 and 40 changed at the time item 5 became effective?

A. I couldn't answer as to that, Mr. Enoch, at this time. There was changes made and changes afterwards and there have been changes made all the way through.

[fol. 2280] Exam. Taylor: Just to get the record straight, Mr. Enoch, as I understand it, this item 5 that you are talking about was in effect long prior to this date that he is talking about, 1935?

By Mr. Enoch:

Q. How long has item 5 been effective?

A. I couldn't answer that.

Exam. Taylor: I think there was some testimony yesterday that that first became effective in 1925.

The Witness: 1922, I believe. Now, I wouldn't say that positive, but it was in effect at the time that this came up.

Mr. Belnap: This is Jones' tariff in CFA? I thought that the 1935 date was the first time that that tariff——

The Witness: It was in that tariff, but similar items were in other tariffs.

Exam. Taylor: That is a reissue of items that had been there for years and years.

Mr. Belnap: In individual lines' tariffs.

The Witness: Yes, 535-A was a consolidation of all the rules, you might say, in the other tariffs, to make them uniform. It was in some tariff because if it hadn't been, it wouldn't have been in 535-A.

By Mr. Enoch:

Q. I gather from your testimony and perhaps from testimony which preceded yours, that prior to 1935 the carriers had some disagreement among themselves as to the application of these rates because of the different provisions in the

[fol. 2281] individual lines, and after long study and thought, you finally agreed upon item No. 5 as a cure-all.

Mr. Brown: Now, just a moment. You said that the railroads disagreed, Mr. Enoch. That isn't a fact.

Mr. Enoch: I didn't intend to state it as a fact if it isn't so.

Exam. Taylor: I would state that they agreed to bring their tariffs into uniformity.

The Witness: Mr. Enoch, for the record, I will just explain some of the things that came up. Some of the roads were applying the ex-Illinois reshipping rates on ex-barge grain under their individual tariffs, and it wasn't the Pennsylvania Railroad. The question arose as to what was a proper rate to apply on this, and all stating and agreeing that ex-proportional or ex-northwest rates should be applied. And it was the agreement, understood by the Chicago trade, that the ex-northwest rate should be applied on this traffic.

By Exam. Taylor:

Q. On the ex-barge traffic?

A. On the ex-barge traffic, and since that time, to my knowledge, I don't know of any other rate being applied on such traffic.

Q. And is this true, that it just so happens that this rule 5 had been in effect all the time?

A. And that was what brought it up, Mr. Examiner, at the time, was the application of our present rates on ex-barge grain.

Q. I will ask you one more question. This rule 5 that we [fol. 2282] have been talking about here was in effect long prior to the time that you had any ex-barge traffic?

A. It wasn't put in there to make rates applicable on ex-barge grain.

By Mr. Cole:

Q. But all roads differ?

A. Yes.

Mr. Cole: In all the individual tariffs.

By Mr. Enoch:

Q. You say it was or was not?

A. It was not put in there, for the particular reason that it appears on ex-barge grain. It was there when ex-barge grain started to move.

By Mr. Enoch:

Q. Why is it important now as to what was settled as being in this tariff as of January 1, 1935, if you didn't——

Mr. Belnap: It couldn't be in that tariff January 1st.

The Witness: June 28th.

By Mr. Enoch:

Q. If it wasn't for the purpose of bringing together a uniform practice on behalf of the eastern lines?

A. Oh, yes. It was brought from some tariff. I wouldn't say that rule 5 was in all tariffs. I wouldn't know, wouldn't have any way of knowing, but it was in some tariffs and the some tariffs was the reason it was brought forward in Jones' 535-A, because that tariff put together all the rules that were in the individual tariffs, the other individual tariffs.

By Exam. Taylor:

[fol. 2283] Q. But it wasn't a new rule, it wasn't written for the purpose of applying only to this ex-barge traffic?

A. No.

Q. But developed after the rule had been established?

A. It was interpreted as applying on ex-barge traffic.

By Mr. Enoch:

Q. Now, do you base the interpretation you have just referred to on the last sentence?

A. Mr. Brown gave it pretty completely. Oh, here?

Q. Yes.

A. Yes, that would be the principal thing.

Q. Now, in your efforts to have some uniformity in the application of these rates eastbound, do you give any consideration to the character of the transportation agency that would bring this grain into Chicago?

A. I wouldn't say that. Of course, we knew it had to be in some kind of a boat or a barge to get it up the

river. The only thing that we have to go by and rely on is the recording of the billing, the manner in which it is recorded. It comes in in a boat or a barge, so many bushels or so many pounds, not particularly bushels, and that is applied against the outbound, as the so-called records were read in yesterday.

There was a lot of consideration given to this. It wasn't any overnight work. It was given consideration by years and all leading up to the future. It was some way to get the rates made through some of this affected territory via [fol. 2284] all rail in competition with the barge. The Pennsylvania Railroad has been very desirous, Mr. Enoch, for your benefit, of doing that.

Q. In 1935, was the Federal Barge Line bringing any of this grain into Chicago up the Illinois River?

A. I couldn't answer that. Possibly the exhibits would show that. I couldn't answer that.

Mr. Belnap: Mr. Oliphant's exhibit does show that, I think.

By Mr. Enoch:

Q. Did you know prior to this hearing that some of this grain upon which you are applying proportional rates was brought into Chicago by private carriers?

A. I didn't even know prior to this meeting who owned the barges or who did the towing. I have no knowledge of the operation of the river or the lake or anything else.

Q. When you were intending to have this uniform application of rates east of Chicago, did you know at that time whether or not any of the grain upon which they were to be applied was being brought into Chicago by private carriers?

A. No.

Mr. Dyche: Will you read the question, Miss Reporter?

The Witness: I answered it no.

Mr. Dyche: You answered this last question.

Exam. Taylor: May I see that rule 5? Off the record.

(Discussion outside the record.)

Exam. Taylor: Had you finished, Mr. Enoch? Mr. Gar-
[fol. 2285] rison, you adopted Mr. Brown's testimony?

Mr. Dyche: He said he concurred in it.

The Witness: Concurred in Mr. Brown's testimony, please.

By Mr. Enoch:

Q. Concurred in that. And that concurrence includes Mr. Brown's statement about transit?

A. Yes.

Q. You considered that this corn, for example, comes up from Morris, put into an elevator at South Chicago and then moves eastbound a week or a month or six months after unloading into the elevator, is in transit at Chicago just as grain at Kansas City would be in transit that is brought in from Kansas and put in the elevator and six months later moves out to some rail destination?

A. Yes, sir, under the provision of the transit rules.

Mr. Enoch: That is all.

By Exam. Taylor:

Q. Mr. Garrison, you have been talking about item No. 5. The application of the rates contained on page 92 of Agent Jones' ICC 3300. The last paragraph of that rule reads, "The foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex-river, ex-ocean or ex-lake traffic." Isn't it true that the carriers, including the Pennsylvania, attempted several years ago to take that clause out of rule 5?

A. As I recall it, yes, and it was either suspended or withdrawn.

Exam. Taylor: I think the way it happened, the carriers [fol. 2286] filed a tariff attempting to cancel out the last paragraph of that item 5 and this was protested. Before action was taken by the Commission, the carriers withdrew the tariff. Is that your recollection, Mr. Brown?

Mr. Brown: I don't remember that, but I know that that last paragraph in that is to exempt or except river grain or lake grain from certain provisions that apply to rail grain; namely the principal one is the application of the local rate from the reshipping point.

By Exam. Taylor:

Q. In your opinion, does this last paragraph nullify the first paragraph?

A. Oh, yes, it does that as far as the ex-barge is concerned.

Mr. Enoch: That is what I can't understand. I can't see the pertinency here, because this simply undoes what has been by the first paragraph of that item No. 5 and relies wholly on the provisions in other tariffs.

Exam. Taylor: I think there is sufficient in the record and we can argue on brief as to that.

Have you any further questions of Mr. Garrison? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Dyche: I would just like to state, to clear up the record, that Mr. Garrison has testified on behalf of the Pennsylvania Railroad as one of the respondents, and it was [fol. 2287] thought that after Mr. Brown's testimony, giving his views of the tariff, it would be helpful for the Commission to have the views of at least one of the respondents.

The Pennsylvania Railroad as respondent is not supporting the proposed adjustment on the basis that there is any question as to the applicability of the past existing rates. They have always considered them applicable and do now, and they understand that was the position of at least some of the other respondents.

Exam. Taylor: Thank you.

Mr. Macaulay: Mr. Examiner, I called Mr. Donahoe as a witness and he made certain statements from memory as to the amount of corn that he sold during the year 1939 and the price which he received. Mr. Donahoe tells me that upon going home, he checked his records and he finds that he made some misstatements which he would like at this time or some time during the course of the balance of the hearing to correct, if he may.

Exam. Taylor: You may put Mr. Donahoe on at this time to clear that up. Mr. Donahoe.

Mr. Macaulay: Mr. Donahoe has been previously sworn.

JOHN T. DONAHOE recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Macaulay:

Q. Mr. Donahoe, are you the same Mr. Donahoe that appeared a few days ago as a witness for Mr. Finnegan? [fol. 2288] A. Yes, sir, I am.

By Exam. Taylor:

Q. Appeared Monday, January 22, 1940?
A. Yes, sir.

By Mr. Macaulay:

Q. You made certain statements relative to the price you received for grain sold during the year. Do you wish to make any statments correcting the statements that you previously made?

A. Well, I went home and went over the record of my sales in the last year, and I find that the difference or the prices I gave were not—they were too low in comparison to what I really received.

Q. Do you have your records here so that you might testify from them?

A. Yes, sir, I have.

Q. Now, will you go through the various sales during the year 1939 and the price you received and the price, if you know, that grain was bringing in the Chicago market on the day that you made the sale?

A. Well, now, there is one thing I want to—on the price on the Chicago market, I would take the call bids on the date of sale of grain to arrive. That would be the price as I have been told and shown by Mr. Finnegan. I have argued with him on that question when I was selling grain, and that, as I understand it, is what he sells this grain on.

Q. Where did you get the——

[fol. 2289] Exam. Taylor: Is that after the close of the market?

By Mr. Brown:

Q. He gets the to-arrive price today which he is using on comparison with sales that he made the next day?

A. Yes, sir.

Q. Or that day?
A. That day, yes, sir.

By Mr. Macaulay:

Q. From where do you get your information regarding the call price or the price of grain on the days in question?
A. Well, we would get it from this Daily Trade Bulletin. It is a financial and commercial paper published with all the commodity prices in it.
Q. Is that commonly called the Howard Bartell?
A. It is published by them, yes, sir.
Q. State the full name, please.
A. The Howard Bartell & Company, Incorporated.
Q. Now, if you will, proceed.
A. On May 25, 1939——

By Mr. Enoch:

Q. May I interrupt you just a moment?
A. Yes, sir.
Q. Are you giving the dates and about to relate the transactions about which you have previously testified?
A. Yes, sir.
Exam. Taylor: He is trying to correct it.
The Witness: I don't know that it is the exact transac-
[fol. 2290] tions. I just—I didn't give any real transactions in my testimony; I couldn't. I couldn't give any dates or anything, anything more than I have sold grain.

By Mr. Macaulay:

Q. Does this cover all the dates you testified to that you sold grain in 1939?
A. Yes, sir.

Mr. Enoch: I don't understand that we will be able to find out where the witness is wrong when he gets through testifying, if he can't identify the previous transactions about which he did testify.

By Exam. Taylor:

Q. Can you hook it up as you go along?
A. I don't think I specified any specific transactions. I just stated——

Q. You made general statements before?

A. Yes, sir.

Q. And now you wish to be specific, is that the point?

A. Yes, sir, that is it. First I will give the date of sale and now——

By Mr. Day:

Q. Mr. Donahoe, to refresh your recollection, you did say in one instance that you got 52 cents, didn't you? Was that just a part of your general statement, that you got 52 cents a bushel?

A. I think Mr. Brown asked me a question, suppose that grain were 60 cents, what would I get for grain?

Q. It wasn't a specific transaction?

[fol. 2291] A. No, he just asked me that as an example, as I remember.

By Mr. Brown:

Q. And the spread was 8 cents?

A. Yes, sir.

Q. And you want to correct that?

A. Yes, that is it. I will give the date of the sale and the date of the settlement for which I have my original sheets. Now, as to the date of sale, I have nothing but copies of my confirmations. I don't keep my confirmations after I settle up, but these confirmations were taken from Mr. Finnegan's books that he keeps. And then I have the number of bushels and the call bid on that day and the sales were as follows. On May 25, 19—.

Mr. Day: I think I will object to this. If these were taken from Mr. Finnegan's books, this witness certainly isn't competent or qualified to testify as to those records.

By Exam. Taylor:

Q. How do you hook it up with Mr. Finnegan's books?

A. Well, he keeps a sale book there.

Q. Supposing you had two sales on the same date or Mr. Finnegan had two—bought twice on the same date and both of them were 1,500 bushels, with different prices; how would you know which one was which?

A. Well, now, the way he does, he makes out a confirmation of each sale or certifies that, and I think to everyone.

He keeps the yellow copy and gives me the white copy, and [fol. 2292] at the same time he has a sale book that he puts the amount of this grain in and the name and the price on each date.

Q. And that is what you referred to to verify what testimony you are going to give now?

A. Yes, sir.

Exam. Taylor: Do you still make your objection, Mr. Day, after that explanation?

Mr. Day: Well, I will withdraw the objection.

Mr. Enoch: May I say this?

By Mr. Enoch:

Q. This is corn that was sold to Mr. Finnegan?

A. Yes, sir.

Q. And you have to go to Mr. Finnegan's books to find out how much you got from that corn?

A. No, sir, no more than to get confirmations of the sale date, the date of sale.

Q. You know how much you got for your corn?

A. Yes, sir, I have all the original settlements, sheets, myself.

Q. Why did you pay any attention to Mr. Finnegan's books, then?

A. Well, to get the date of the sale, to show how close it was to the Chicago market. I think you were one of the men that asked me if I could give a specific difference and that is the only way——

By Exam. Taylor:

Q. Specific date?

A. Well, a difference——

Q. And show the market price on that day?

[fol. 2293] A. That is right.

Q. And now you are complying with his request?

A. Yes, sir.

Q. So far as is possible for you to do?

A. As far as I could possibly do it, yes, sir.

Exam. Taylor: Proceed.

The Witness: On May 25, 1939, the date of sale, I sold roughly 3,000 bushels of corn.

By Mr. Day:

Q. What do you mean by "roughly"?

By Exam. Taylor:

Q. Can't you give the specific amount?

A. No, always on sales of corn in the country, no one knows exactly how much grain there is in a certain crib or bin, and you will go to the grain man and sell, for example, we will say, 3000 bushels of corn. Now, they allow you a leeway, as a rule, of 300 bushels under that or 300 over it.

By Mr. Macaulay:

Q. At that price?

A. At that price. Now, if I could only deliver 2700 bushels of corn, that would fulfill my contract. If I delivered 3300 bushels of corn, I would still get the price of the sale for the extra 300 bushels.

By Mr. Day:

Q. As I understand, you are not able to tell whether you actually sold 2700 or 3300 on that day?

A. Oh, yes, I have the—of course, I would know when the grain were hauled in and weighed.

Q. But you don't know now?

[fol. 2294] A. Well, you would never know when you sell corn, ahead of when you sell it.

By Exam. Taylor:

Q. Mr. Day asked you, does your record show now how much you sold?

A. Oh, yes, the date of settlement will show that.

Q. That is what he asked you.

A. Pardon me. Now, the sale date was the 25th. In fact, that was the day I hauled in the corn. The corn was being hauled in on that day. On the 26th, I settled for the corn and there 3239 bushels at 49 cents was the sale price. Now, the call bid on that day——

By Mr. Day:

Q. Which day?

A. On the 25th, the day I sold it.

By Mr. Macaulay:

Q. What type of grain was that? Will you state that?
A. That was sold as No. 3 yellow corn. The call bid on May 25th for No. 3 yellow corn to-arrive was between 49½ and 49⅝ cents. The next sale, in fact, the sale ahead of this, was made at $2200, but that corn was not delivered until June 7th or that was——

By Mr. Day:

Q. Let me understand you. You made the sale, the sale you made previously was on May 22nd?
A. Yes, sir.

By Exam. Taylor:

Q. This is another sale?
A. This is another sale, yes.

[fol. 2295] Mr. Day: I don't understand why he is going back.
The Witness: It just happens that the settlement date was after.
Mr. Day: All right.
The Witness: And the settlement date was June 7th. That was a small crib of corn of 685 bushels, which I also received 49 cents for.

By Mr. Day:

Q. How many did you sell at that time?
A. I would have to look at the confirmation sheet on that. 685 bushels, it says, and 40 pounds.

By Mr. Macaulay:

Q. Is that the confirmation showing?
A. Yes.

Mr. Day: Off the record.
Exam. Taylor: Yes.

(Discussion outside the record.)

Exam. Taylor: Put that on the record.
The Witness: I delivered just enough corn to fill that contract from this particular farm, and there was about a

truckload more which I hauled home for feed. Now, that is how that comes now, the call bid on that date to arrive, No. 3 yellow corn——

By Exam. Taylor:

Q. What date was this?

A. May 22nd, was 48⅜ cents. Now, on July 8th, I sold 5100 bushels of No. 2 yellow corn.

By Mr. Day:

Q. By the way, what kind of corn was this in the second [fol. 2296] transaction?

A. All yellow.

Q. Number what?

A. The first two transactions I mentioned were No. 3.

Q. Both No. 3?

A. Yes. The next transaction is No. 2 yellow, 5100 bushels at 45⅝ cents, which I settled for on July 11th and July 12th. The reason for that is, it came from different farms. One was shelled one day and one the next, and naturally I settled a day apart. And on one of the farms it was a poor crib and I didn't receive the 45⅝, but I received 43½ or a dock on that one.

Q. On all of it?

A. No, on one crib of 1127 bushels.

Q. 1127?

A. Yes, sir.

Q. You received what?

A. 43½ cents.

Q. And on the balance 45⅝?

A. On the balance 45⅝, yes, sir, and that was in two lots of 1100 bushels and 2103 bushels. The reason for those lots, it was from different cribs and different farms. And the call price on that date, which would be July 8th, for No. 2 yellow to-arrive was 47¼ to 47⅜ cents.

The next sale was October 19th, in fact I sold two lots [fol. 2297] on that day. In the morning, I sold a small lot of yellow corn for 46½ cents.

Q. What number yellow?

A. Well, No. 2 yellow.

Q. At what price?

A. 46½ cents.

By Mr. Macaulay:

Q. Was that old or new corn?

A. That was new corn. And I learned of this at noon. I went up again, we had some old corn and I went up and sold that at noon on October 19th for 46 cents. And the call bid on the date of October 19th for No. 2 yellow to-arrive was 48 cents for new and 48 cents for old.

Q. Do I understand that you have your original records on all of the transactions as to the settlements of those particular sales, and that those settlement sheets show the price that you received, the bid for the grain and the amount actually received by you?

A. Yes, sir, that is right.

Q. May I ask you this, Mr. Donahoe, did you pay the cost of shelling and trucking to the elevator yourself?

A. Well, in some cases—of course, those prices are delivered at the elevator. Naturally, the trucking and the shelling came out of me regardless. In a couple of instances, I see where the sheller would come to the elevator and collect his money, which I understand they have a right to do, [fol. 2298]to take it right out of the corn. I understand that is the law. Now, I don't know for certain on that but in other cases, the man that shelled and hauled the corn came to me directly and I paid him. In a few of the bills here, I noticed that the shelling and hauling was taken off right at the elevator, in other words, he paid the sheller and hauler right out of my money.

By Mr. Day:

Q. Could you go down the line and tell us which cases he took it out and which he didn't?

A. I could through the bills.

By Mr. Macaulay:

Q. Take your May 25th sale, which was settled on May 26th.

A. Yes, sir. No, that—the hauling was paid by me——

By Mr. Day:

Q. In that case?

A. In that case, directly, yes, sir.

By Mr. Macaulay:

Q. Your settlement of June 7th of your sale of May 22nd. What was the situation there?

A. I paid for the hauling myself. It isn't taken out here. But on that bill are some things that were taken out, and I wish to explain them.

In this farm that I run near town, there are times that I would come in and get a part of a load of shelled corn for feed. It was handier than shelling some myself, and some oats, and they were taken out on this bill. It shows right on the original bill where they were taken.

By Mr. Day:

Q. You mean the elevator deduced the cost to you of [fol. 2299] this corn and oats you bought?

A. That is right. I bought from the elevator. Now on the next date, where the settlement date was July 12th, the shelling and the hauling is taken ont there.

By Mr. Macaulay:

Q. And the discount noted also on that bill?

A. There is no discount on that one.

Q. You stated there was 43⅓ paid on the 1127 bushels?

A. Yes. Wait a minute, there is another bill there. That is the first bill. Then on the second bill, the shelling and hauling is taken out. But on the first bill of 2103 bushels, it is not taken out. On the second bill—

By Mr. Day:

Q. Now, wait a minute. The first bill you referred to in your previous testimony was 5100 bushels of No. 2——

A. That is right.

Q. That is the total?

A. That is the total sale.

Q. And the 1127 was the first at 43½?

A. At 43½ cents.

Q. And that was taken out, you say?

A. Less shelling and hauling. Just a moment. That was taken out. The one that was not taken out on that day, I say, is the 2103 bushels at 45⅝.

Q. The 1100 was taken out?

A. The 1100 was taken out and the difference in price shows on there too.

[fol. 2300] By Mr. Macaulay:

Q. That is the 1127 or 1100?

A. Well, they are both on the same bill. There is 1100 bushels at 45⅝ and 1127 at 43½, and the total.

By Mr. Day:

Q. And both those, they took it out?

A. They took it out of both.

Q. And on the other item, you paid the sheller?

A. That is right. How that happens there, the man that is on this particular farm owns the sheller and of course we settle that afterwards. That is how that had happened there. Then on October 19th, on the small amount, 375 bushels, I see the shelling and hauling is taken out at the elevator.

Q. On both the new and the old corn?

A. That is the new. And the old, yes, sir. Each bill is separately; taken out of all of it on those dates.

By Mr. Macaulay:

Q. What is the date of the settlement on your old corn that you sold on October 19?

A. The date of settlement on the new corn is the 19th and the date of settlement on the two lots of old corn is the 23rd.

Mr. Macaulay: That is all.

By Mr. Day:

Q. While you are on that one, will you tell us the quantity? You didn't name it on October 19th.

A. The quantity of the sale? You mean the confirmation that would be?

Q. No, the amount of corn you sold, new and old?

A. I sold 1700 bushels of old corn and the new corn, I [fol. 2301] said no amount a bushel. I just said No. 2 yellow corn. I will tell you, it was just a little bit in a little crib and I had no idea what it was. I told them it was less than 500 bushels.

Q. How much was it?
A. The price confirmation?
Q. Yes.
A. 46½ cents.

By Mr. Macaulay:

Q. The amount?

By Exam. Taylor:

Q. The amount of it?
A. Well, the amount finally was 375 bushels.

By Mr. Day:

Q. 375 bushels?
A. Yes, sir.

By Mr. Macaulay:

Q. That is of the new corn?
A. Yes, sir.

Exam. Taylor: That is all you have, Mr. Macaulay?

By Mr. Macaulay:

Q. That covered the rest of the farms that you spoke of, Walsh Estate, your own property?
A. Yes, sir.
Q. Catherine Donahoe?
A. My mother's and the Walsh Estate and mine, yes, sir.
Q. That is all the corn you sold during 1939 from those respective farms that you mentioned?
A. Yes, sir.

Mr. Macaulay: That is all.
Exam. Taylor: Cross examine. Mr. Day.

[fol. 2302] Cross-examination.

By Mr. Day:

Q. That made about 11,000 bushels you sold all together last year?
A. Somewhere between ten and eleven thousand bushels, yes, sir.
Q. You didn't have any white corn, as I understand it?

A. No, we don't.

Q. Are you a subscriber to this Howard Bartels' publication?

A. No, sir.

Q. You say you get it every day?

A. No, I didn't.

Q. How often do you see it?

A. Whenever I go up to the elevator, they have them there, they get them every day and of course, I check his price with——

Q. But you are only interested in the price, I suppose, at the time you are going to sell the grain?

A. That is right, yes, sir.

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch.

Mr. Cole: I have a couple of short questions.

Exam. Taylor: Mr. Cole.

By Mr. Cole:

Q. I believe during your direct you said that for several lots of corn on one day you got 48 cents, when the delivered price at Chicago was 50 cents. Did you hear the testimony that the charge for transporting that grain after it was purchased from you up the Illinois waterway was a cent [fol. 2303] and a half a bushel?

A. No, I didn't.

Q. You don't know what that charge is?

A. No, I don't.

Q. Did you hear that there was, in addition to that, a trimming charge of .62, .62 of a cent a bushel on the grain?

A. No, I didn't hear it, but I imagine there would be, yes.

Q. Do you know or do you understand from a selling price standpoint how it would be possible for you, at point of origin, to secure 48 cents a bushel for grain, if the lowest cost possible of transporting that grain came to 2.12 cents per bushel to get it to Chicago?

A. Well, I will have to state that I kind of wondered about that myself when I—but of course, all I have to go by is my—what he gave me for the corn.

Q. I believe you testified you sold that to Mr. Finnegan?

A. Right.

Q. When you sold that to Mr. Finnegan, did you know, or did you learn anything of Mr. Finnegan's necessities for having corn to make deliveries that he had previously contracted for?

A. Oh, no, I wouldn't know.

Q. You don't know anything about that?

A. No.

Q. Did you learn or did you know anything connected with Mr. Finnegan's contracts that he had outstanding for [fol. 2304] the sale of corn when he bought that corn from you?

A. Oh, no.

Q. Do you know what Mr. Finnegan, in turn, sold that corn for that he paid you 48 cents for?

A. No, sir.

Q. Are you familiar enough with the sales and purchasing and the handling of grain so that you might know that there would be a possibility that Mr. Finnegan had sold corn at some past time for future delivery at a contract price that he had arrived at, at a price that may have been different than the market price on the day that you sold him the corn?

A. No, sir.

Mr. Macaulay: Mr. Finnegan testified to his practice, sometime selling to arrive, and said that if it looked as though the premiums were going to increase, he would sell——

Exam. Taylor: Let the record speak for itself, Mr. Macaulay.

By Mr. Cole:

Q. Did you answer my question?

Exam. Taylor: In the negative.

By Mr. Cole:

Q. At the day you sold this corn, I am using this strictly as an illustration of other transactions. At the day that you sold this corn and you got 48 cents to you——

A. Yes.

Q. You testified that the Chicago market on that day was 50 cents. Now, do you know any possible way of getting [fol. 2305] corn from the point where you might deliver

to Chicago for even that difference of 2 cents that there was between the price that you secured, cash, and the Chicago market price delivered in Chicago that day?

A. Well, I am sorry. Of course, I couldn't answer that question. Here is all I was interested in, to get the most I could for my corn and that would be——

By Exam. Taylor:

Q. In other words, you are unfamiliar with what the rates via rail or barge or any other form of transportation would be?

A. That is right.

Q. Your point of delivery to Mr. Finnegan are the Chicago elevators, South Chicago elevators?

A. I don't even know where it goes.

Mr. Cole: That is all.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Donahoe, on transactions which you say took place October 19th, from what document if any, before you, do you get the call bid 48 cents for new and old corn?

A. Well, as I said when I started my testimony, I am just getting that from the way I figured out myself from this merchandise sheet. They have here bids on cash grain to arrive, corn.

[fol. 2306] Q. What document is that——

A. Yes, sir. This trade bulletin.

Q. All right.

A. You say on October 19th. Well, I sold No. 2 yellow corn on that date. And you can look at this here and they show for 10 days' shipment, old crop No. 2 yellow, a cent and three-quartres under December. Then of course I take the close of December on that day and take a cent and a quarter under that price. The close in December –that particular day was 49⅞. It is three-quarters and a cent off of that—a cent and three-quarters off of that would be 48 cents. That is where I arrived at that.

Q. There isn't any December price, is there, futures price for new and old corn? How do you get a call bid by basing on December if it is for new and old corn on October 19th?

A. Now, I am not—that is put out, as I understand it, by houses that want to buy this grain and that is the way they price it. As I understand it, a corn man could sell to a grain house here in Chicago that corn to arrive within 10 days at that price. Now, that is my understanding of it.

Mr. Macaulay: Can we ask Mr. Brown if that is a regular practice, to buy corn on a basis with reference to the next delivery date? Isn't that a fact, Mr. Brown?

Mr. Brown: He is talking about the call price for acceptance before opening the next morning.

[fol. 2307] Mr. Macaulay: Well, the cash price in Chicago, isn't that the December future less this basis of one and three-quarters?

Mr. Brown: I can't tell what it shows there.

Mr. Macaulay: If it shows there it is one and three-quarters over, that would be the method of determining the value of cash corn on a particular day, when you either added to or deduct——

Mr. Brown: No, he says the total price there that went out on the evening of October 19th, after the close, was 1¾ cents under December. He has given us the December price. He took the cent and three-quarters price. That is the price that is put out, but it must have been accepted before activities began the next day. It must be accepted by somebody in the call that takes that bid and agrees to deliver it.

The Witness: Of course, I take it for granted when I sell this corn to Mr. Finnegan that he sells it. That is not for me to know. Of course, that is where I arrived at my price.

By Mr. Brown:

Q. You don't know what he got for it?

A. Oh, no. All I would use that for was to see if I thought I were getting a good price.

Q. To see you weren't being gypped on the to-arrive price?

A. That is right. That is what I use that for.

Q. But the figures you have shown, you have given here that you got, are no criterion of what the difference was between the price you got and what yellow corn sold for in Chicago, actually sold for on the day that your corn [fol. 2308] arrived in Chicago by barge, does it?

A. Well, I wouldn't know as to that.

By Mr. Macaulay:

Q. You sell your corn for delivery in Morris and not to-arrive in Chicago?

A. That is right. Of course it loses its identity, and as far as I am concerned, when I deliver it to him——

Mr. Brown: In other words, he shows by comparison between the cash prices that he got and what the to-arrive price was on the day before he sold. That is all he shows but he does not show the difference between what he got and what the grain that he sold actually sold for in Chicago.

Mr. Macaulay: Is there a better way of stating that, Mr. Brown, from this Howard Bartel service? I am not sufficiently familiar with it to know what the cash price was in Chicago on the day of the sale. If he is stating it incorrectly, would you correct him?

Mr. Brown: I am not stating his case at all. I am simply saying that he cannot tell. He first said his spread between his price and the Chicago cash price would be 8 cents a bushel. Now he finds that is too great and wants to change that figure, but he can't tell you now or tell the record what the difference was between what he got and what his grain actually sold for in Chicago, delivered in Chicago.

Mr. Macaulay: That is true, but he can tell what grain of like kind sold for in Chicago for that day.

[fol. 2309] Mr. Brown: No, because he doesn't know whether that bid was accepted by anybody.

Mr. Macaulay: He doesn't need to know. He knows if the bid was accepted, it would bring that price, because this record is the best evidence of that.

Mr. Brown: I don't think it is the best evidence at all, because you don't know that it was the same price grain that was contracted for that went out on the evening of October 19th.

Mr. Enoch: That is all I have.

Mr. Brown: I am not questioning his figures or account, not at all.

Exam. Taylor: Have you any cross examination, Mr. Brown?

Mr. Brown: No.

Exam. Taylor: Anything on redirect?

Mr. Macaulay: I think we have a sufficient showing as to the Chicago price. That is all.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

Mr. Belnap: Mr. Rich.

C. J. Rich, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Belnap:

Q. You are the same Mr. Rich who has previously testified in this case?

A. I am.

[fol. 2310] Q. Mr. Rich, you testified previously, you gave in part only the disposition outbound of grain covered by some of the barge billing of yourself, which is a matter of record in this proceeding. Will you please refer to the exhibits where you did not give the complete story and tell us the disposition as to the balance of the grain?

A. Exhibit No. 32, the portion not shown yesterday, was 616,680 pounds of oats; originating at Morris, Illinois, on November 25th.

Q. Can you give the exhibit number?

A. Yes, 32; I gave that. That entire amount went out, was shipped beyond Chicago via rail lines to destinations in CFA and Trunk Line Territory, such as Lexington, Kentucky, Bellevue, Ohio, Front Royal, Virginia, and Baltimore, Maryland.

Exhibit No. 32, there was 235,070 pounds of soy beans not spoken for yesterday, which entire amount was switched cross town to the Archer-Daniels-Midland Company on the St. Paul Railroad.

Q. What is the Archer-Daniels-Midland Company?

A. They are processors of soy beans, making crude and refined oil and soy bean meal. They also handle grain.

Q. Have you here——

By Exam. Taylor:

Q. Just a second. Was the weight on the beans cancelled by the inspection bureau, do you know, or did the Archer-

Daniels Company get the benefit of some proportional out [fol. 2311] as well?

A. We would turn the tonnage over to Archer-Daniels-Midland and they would use it out as they saw fit.

Q. Would those do that through the transit bureau?

A. Yes, sir, to show a change of ownership.

By Mr. Belnap:

Q. To comply with the change of ownership rule in the transit tariff?

A. That is right.

Q. And then their outbound commodities are subject to certain reshipping privileges under the complete rate application of the tariff?

A. That is right.

Q. Which exhibit was this on? This is 32?

A. 32.

Q. Refer to the copy of the Allied Barge Corporation freight bill shown of record as exhibit 32. Do you have here for inspection the original of that bill?

A. Yes, sir, showing the endorsement on the reverse side.

Q. And how does the endorsement read? Tell exactly how it is written.

A. There is a certificate placed on the reverse side of the original barge bill which reads, "Pay to the order of" and then a blank line in which the Norris Grain Company's name was written in pencil and underlined, the name Lowell Hoit and Company.

[fol. 2312] Exam. Taylor: Do you wish to inspect that? Do counsel wish to inspect that? It is introduced merely for inspection?

Mr. Belnap: Yes.

By Mr. Belnap:

Q. Mr. Rich, have you the cancelled——

Exam. Taylor: Just a minute. Let me see that, Mr. Belnap, please.

Let the record show that the original of exhibit 32 shows over the words "Oats and beans", "Bulk Commodities"; over 19,271.08 bushels, the word "Weight"; over the figure .014 the word "Rate"; and over the last column the word

"Totals." The endorsement on the reverse side of this paper merely states "Pay to the order of Norris Gr."

The Witness: Abbreviation for grain.

Exam. Taylor: And under that, Lowell Hoit and Company, just a rubber stamp. Now, whether that is a substantial compliance with the rule of the tariff as to the transfer of the right and title to the billing is some question.

The Witness: That is the general practice of all commission houses in respect to rail traffic, and accepted by their auditing departments.

By Exam. Taylor:

Q. They all merely rubber-stamp their bills in that fashion?

A. That is right.

Mr. Brown: This isn't grain, you know, where the title passed when it went into the elevator, where the title passed before. In other words, that same sort of an endorsement [fol. 2313] would appear by a receiver of a carload of grain which he sold for Norris for delivery to his elevators.

Exam. Taylor: I wanted it on the record so it will be clear. Very well.

By Mr. Belnap:

Q. Mr. Rich, have you here original checks covering payment of freight rates to the A. L. Mechling Barge Line about which the Examiner asked you yesterday?

A. I have.

Exam. Taylor: Exhibit them to counsel before you go into it, please.

Mr. Belnap: What was the last I asked him?

(Record read.)

By Mr. Belnap:

Q. Which inbound shipment is covered by check No. G-23478?

A. The shipments received in exhibits 33 and 34.

Q. Will the total amount of that check be equal to the inbound tonnage shown on those exhibits as multiplied by the rates which Witness Mechling stated he assessed from those origins?

A. No, sir. The correct extension of that check would be $461.17.

Q. State it separately for the two exhibits.

A. $219.46 for exhibit 34 and $241.71 for exhibit No. 33.

Q. How much was deducted from the correct extension in remitting to Mr. Mechling?

A. There was $57.73 deducted from the two totals.

Q. For what reason?

[fol. 2314] A. In payment of services rendered by us at our Irondale elevator, occasioned by Mechling Barge Line spotting a loaded barge at our elevator and our employees thinking the barge belonged to us or the grain belonged to us, proceeded to unload it. After having unloaded 7208 bushels and 52 pounds, they found out their error and the——

Q. Did the barge or grain belong to some other elevator?

A. The grain and barge belonged to some other elevator.

Q. Then what did your people do?

A. We loaded the grain back into the barge and then it proceeded on its way to its correct destination and we assessed Mechling for the expense that we went to in the handling of this grain, which totalled $57.73.

Q. That was made up of what items, as to character?

A. Made up of in weighing and out weighing; in inspections and out inspections; in trimming and out trimming and for the use of the power shovels at the elevator.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Belnap: Do you want this check copied or is that sufficient?

Exam. Taylor: I thought you were going to copy all of them.

Mr. Belnap: We can. You would like to have them all copied right in the record?

[fol. 2315] Exam. Taylor: After you get all through with this.

Mr. Belnap: I thought I would put them right in where each one would be described.

Exam. Taylor: All right, do it your way. Go ahead.

Mr. Belnap: Mr. Examiner, we have here only the original of the check referred to. May we have the face of it copied in the record at this point? The reverse, I might

say, carries nothing but bank stamps and then this endorsement of Mechling, "Pay to the order of Farmers Bank, Sheffield, Illinois, A. L. Mechling Barge Line. A. L. Mechling." Just copy the check.

Exam. Taylor: Copy the check.

(Which document reads as follows: "Chicago, November, 29, 1939. No. G-32478. Bank of Montreal, Chicago. Pay to the order of A. L. Mechling Barge Line, $403.44. Norris Grain Company • • • 403 Dol's 44 cts Dollars. The signature: Norris Grain Company, D. H. Lipsey.")

By Mr. Belnap:

Q. Now, Mr. Rich, I show you original check No. G 23670, and ask you as to which of the exhibits shows the inbound tonnage as to which that check was given in payment of freight rates?

A. That applies against exhibit No. 35.

Mr. Belnap: I ask to have that check copied in the record, Mr. Examiner.

Exam. Taylor: Yes, sir.

(Which document reads as follows: "Chicago, April 11, [fol. 2316] 1939, No. G 23670. Bank of Montreal, Chicago. Pay to the order of A. L. Mechling Barge Line, $425.23. Norris Grain Company • • • four twenty-five Dol's 23 cts. Dollars. The signature: Norris Grain Company, D. H. Lipsey.")

By Mr. Belnap:

Q. I now show you an original check No. G 23867. What exhibit does that refer, as far as the payment of freight charges is concerned?

A. That check applies against exhibit No. 36.

Mr. Belnap: We ask to have that copied in the record, Mr. Examiner.

Exam. Taylor: It will be copied.

(Which document reads as follows: "Chicago, April 15, 1939, No. G 23867. Bank of Montreal, Chicago. Pay to the order of A. L. Mechling Barge Line, $434.94. Norris Grain Company • • • four three four Dol's cts. Dollars. The signature: Norris Grain Company, D. H. Lipsey.")

Mr. Belnap: That is all I have from the witness, Mr. Examiner.

Mr. Day: May I see those three batches of documents that you have?

Exam. Taylor: Off the record.

(Discussion outside the recorded.)

Exam. Taylor: Are you ready to proceed? Mr. Belnap, are the endorsements on each of the checks the same? You read the first one but I don't believe you stated whether the [fol. 2317] others were the same.

Mr. Belnap: The succeeding two checks, Mr. Examiner, have, as far as Mechling is concerned, the same endorsement stamps. They are different in the bank stamps on the back of them.

Exam. Taylor: All right, does that conclude your direct?

Mr. Belnap: It does, sir.

Exam. Taylor: Cross examine. Mr. Day.

Cross-examination.

By Mr. Day:

Q. Mr. Rich, the consignment weighing 1,581,590 pounds is covered by which check?

A. The check applying to exhibit No. 36 covers the payment of $434.94. That is it.

Q. And of the grain in that consignment, approximately 1,200,000 bushels went out of Chicago by steamer?

A. That is right.

Q. And the balance were rail shipments?

A. That is right.

Q. To Baltimore, Pocomoke, Maryland, Elkins, West Virginia and Buckhannon, West Virginia?

A. That is right.

Mr. Belnap: That has all been explained, Mr. Day, in the fashion you just asked him the question.

Mr. Day: The steamer?

Mr. Belnap: Yes, the steamer and the territory location of the destinations, and illustrative destinations in each [fol. 2317a] territory.

Mr. Day: Off the record.

Exam. Taylor: Yes.

(Discussion outside the record.)

By Mr. Day:

Q. If the steamer tonnage is shown and the direct general location, for instance, do you show that some of this grain went into Paris, Illinois?

A. Yes, I did.

Q. You mentioned Paris?

A. Yes.

Exam. Taylor: Is that all, Mr. Day?

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch?

Mr. Enoch: I have nothing.

Exam. Taylor: Mr. Cole?

Mr. Cole: No questions.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Mr. Belnap: Mr. McClintock.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Proceed.

J. O. McCLINTOCK, was sworn and testified as follows:

[fol. 2318] Direct examination.

By Mr. Belnap:

Q. What is your name, please?

A. J O. McClintock.

Q. What is your business?

A. I am employed by the Continental Grain Company at Chicago; have been employed by them for the last two years, preceding which I was associated with the Farmers National Grain Corporation and the Grain Stabilization Corporation in Chicago.

Q. In what line of work?

A. In the handling of cash grain; buying and selling of grain as relates to the Farmers National and the Continental Grain Company.

Q. Are you a member of the Board of Trade?

A. I am a member of the Board of Trade, have been a member of the Board of Trade about six years, I believe.

By Exam. Taylor:

Q. What is your capacity with the Continental?

A. I am the cash grain man of the Continental Grain Company. I do the buying and selling of the cash grain.

By Mr. Belnap:

Q. Will you please take up one by one the protestants who are associated with Continental in this proceeding, and identify them.

A. The protestants for whom I am to speak in a general way as their interests appear in this case are the Santa Fe Elevator Corporation—do you want a description of their activities or just enumeration of them?

[fol. 2319] Q. I would like to have you tell who they are.

A. Well, Santa Fe Elevator Corporation is a firm in business in Chicago, conducting a general grain business and operate the Santa Fe Elevator in Chicago. The Stratton Elevator Company. They were former elevator operators in this market, but at this time they do not operate an elevator at Chicago but do operate an elevator in the Chicago area at Schneider, Indiana. They likewise operate an elevator at Milwaukee. They are members of the Board of Trade and are one of the protestants. E. H. Bacon Grain Company. They operate an elevator in the South Chicago district and carry on the same general class of business that others, other protestants do. Rosenbaum Brothers. They operate elevators in Chicago are engaged in the general grain business. Cargill, Incorporated, operates a large grain elevator in Chicago and transact a general grain business. Norris Grain Company operate several elevators in Chicago. The Continental Grain Company operate the Rock Island elevator under lease and do a general grain business. The B. A. Eckhart Milling Company, another of the protestants, is a concern that engages in the milling business, flour milling business, and in so far as this particular case is concerned, their interest is only general. They are not engaged in the merchandising of the raw grains but rather the manufactured products from the grain.

Q. Limiting yourself to the protestants who are in the general grain business and operating elevators in the [fol. 2320] Chicago district,—I might say when I refer to protestants hereafter, I am referring to that group only—what is the extent of their elevator capacity with relation to the total elevator capacity at Chicago?

A. The protestants here operate an elevator capacity of approximately 32 million bushels. That is, as related to the total capacity of the market, I believe, is an approximation of 50 million bushels. The records—I wasn't very clear on that. They have some official records here issued by the Chicago Board of Trade but there was some six million bushels of this capacity lost during the year 1929 by fire.

Q. What year?

A. Or 1939; 1939 by fire, and these houses that were lost in this fire were all operated by this group of protestants, by two of the protestants. So that I would say in approximation, the relation of the capacity of the elevators as operated by the protestants as compared to the total would be 32 million as compared to 50 million.

Q. Does the latter figure include the elevator capacity of those who are engaged primarily in the processing of grain?

A. No, we have a distinction here in elevator capacity as to public and private elevator operation. Now, of this 32 million here that I have stated is operated by the protestants in this case, approximately 25 million bushels of that 32 million is public elevator storage. As a matter of fact, the [fol. 2321] protestants in this case do operate and control the total public storage in the market. When I refer to public storage, I mean that it is storage that is qualified as public either under the state or Federal Government and is that space which can be used to make deliveries in satisfaction of future contracts.

Q. What other functions are performed by the public elevators?

A. Of course, the public elevators are employed in our general business operation of buying and selling grain, in the accumulation and the distribution of the grain, and it is likewise used for storage by others. The public elevator space is just what the name implies. It is a public elevator and the services of that elevator are available to the public at published tariff rates.

Q. Are the public elevators also available for the purpose of transferring grain?

A. Well, I included that in my statement, that the services of these elevators are available for anyone that wants to use them in any connection, either for storage or transfer, whichever it may be, either one or all.

By Exam. Taylor:

Q. What do you mean by "transfer"?

A. I mean—we are supposed, for example, to illustrate that, I will say that some grain dealer in Kansas City wanted to sell wheat to a miller in Buffalo and he wanted to ship it to Chicago by rail and then put it on lake steamers here. That would require a transfer from cars to steamers. [fol. 2322] Or if he wanted to ship by barge from Kansas City to the same destination, or if you wanted to ship it by barge to Chicago and thence down to Indianapolis by rail, he could employ the services of this elevator to effect those transfers.

Q. From one form of transportation to another?

A. Yes, or from the same form to another where it might require transfer for some special reason.

Q. Are the public elevators which the protestants operate extensively used for the purpose of such transfers?

A. Yes, quite extensively. That varies, of course, from one year to another. They are quite extensively used not only just for the purpose of transfer but for the purpose of storage.

By Mr. Enoch:

Q. Just a minute, when you say "transfer," you mean physical transfer?

A. Yes. I mean they perform the operations of effecting this transfer of grain that I have just illustrated.

Q. And that is wholly apart from the storage?

A. In the tariffs published by the elevators, the public elevators, they include in their transfer charge 10 days' free storage. They are at liberty, under that tariff, to ship grain in here today and have it unloaded, say, today, and so far as the charges that were assessed against them, they would be no greater if we loaded that grain back into some other movement of transportation 10 days from now than it would if we loaded it back into these same vehicles tomorrow.

[fol. 2323] By Mr. Belnap:

Q. And what is the charge for that transfer service, including 10 days' free storage?

A. A cent and a half a bushel.

Q. Thus far, has that service been utilized in connection with movement of barge grain into Chicago, then out by rail?

A. By the public or by those interested people?

Q. People who employ the public elevator as a public elevator.

A. There has been to my knowledge been such business moved through the Chicago market, but I don't recall that we effected any transfers from barges for shipment beyond for the account of others.

Q. At other lake ports, is it common to use public elevators in the merchandising of grain in order to transfer between—from water to rail or vice versa?

A. It is more than common. It is the customary practice for, say, elevators like ourselves, the protestants in this case, if they want to reach markets beyond Buffalo or beyond Georgian Bay ports in reaching the consuming territory and in that marketing we employ the movement out of Chicago by lake, we do engage the services of public elevators at the gateway wherever it may be, to perform a service for us that is similar to that which I have described can be had here in Chicago. For example, in merchandising our grain into New England Territory, we find that most of the season of open navigation and even during the winter months, that we can best reach that territory, so far as [fol. 2324] transportation costs are concerned, by engaging the lake service out of here to Georgian Bay ports, of which there are a number, and thence making the shipments to the consuming territory by rail.

That same principle is employed when we wish to reach the Trunk Line Territory that can be reached through the Buffalo gateway. It is the practice of the dealers to carry some stock of grain over there, perhaps for the merchandising during the winter months. We move that grain over there preceding the close of navigation, and that is done quite extensively so far as the New England Territory is concerned, because it is more—it is farther removed from points of production and is considered almost a year-around deficit area, and are required to obtain their grain supplies,

principally corn and oats, from the producing section of the central states here.

That is not quite true of Buffalo because Buffalo can—I mean the territory east of Buffalo, have available for their supplies the Ohio and Indiana Territory which they can draw on during the early part of the year.

Q. Are your public facilities in Chicago available, for example, to a grain merchandiser at Indianapolis, if he desires to have grain moved in by river and to Chicago and out via rail?

A. We would be very happy to perform that service and we do hold ourselves out as being not only willing but solicit that kind of business.

[fol. 2325] Q. If that were done, it would be similar to the situation which obtains in Chicago as to transfers of grain other than this ex-barge, and to the situation at Georgian Bay and at Buffalo which you have just described?

A. That is correct. There is nothing to prevent, as far as facilities are concerned, to prevent any dealer or individual, as far as that is concerned, that wishes to participate in any movement of grain into Chicago from which he thinks he might derive a benefit by having available for him these public facilities. They are at his disposal.

Q. Are all of these public elevators so located as to have access — both the river and the lake?

A. They are.

Q. Are they all equipped to load grain out by water?

A. You are referring to public elevators?

Q. I am referring to public elevators of the protestants.

A. Yes, sir, they are all equipped to load out by lake and I believe—well, they are not all equipped to unload from water.

Q. Can you identify those which are equipped to unload from water?

A. Santa Fe Elevator has a marine leg and I shall refer to marine leg here as the instrument by which transfers from water to the elevator are made. The Santa Fe elevator has equipment—has a marine leg. The Calumet house of the Rosenbaum Brothers, that is a house—one of the [fol. 2326] houses, I believe, that was affected by the fire, and has for a portion of the year of 1939 been out of commission, but the house is being reconstructed and it is being equipped with a marine leg. The Norris Grain Company have, I believe, two houses that are equipped to unload

grain from water. The Rock Island elevator, operated by the Continental Grain Company, is equipped to load out or unload from water. And I believe that is the extent—Cargill. Cargill, operating the Northwestern elevator is likewise equipped to unload from water.

By Exam. Taylor:

Q. What was that last, Northwestern?
A. Cargill operate the Northwestern elevator.

By Mr. Belnap:

Q. Did you say how many houses Cargill had which were so equipped?

A. Cargill only operates the one house here, I believe; Northwestern elevator.

Q. I thought you said several. I didn't get it.

Is transportation by water very largely availed of in the merchandising of grain generally, Mr. McClintock?

A. Yes, as far as Chicago is concerned and as far as all locations are concerned that have water transportation available, it is employed very extensively in transportation of the grain in its movement from points of production or nearest points of production to or towards consuming territory, which applies not only to domestic business but to export business.

Q. That extensive use is predicated, I assume, on the fact [fol. 2327] that the cost to the shipper is ordinarily less via water than via rail?

A. That is the case generally speaking. I think we have one particular instance here, may be on exhibition, where the water-rail haul through Chicago to, I believe it was Baltimore, happened to be a little bit cheaper than where more water transportation was involved through the Buffalo gateway. That happens to be an unusual condition and is based on the fact that that cost was unusually high, due to the heart of the journey, that went through the great lakes and the unusually high rates that we experienced on the great lakes this season. Generally that is the case, that the all-water route or the rail-water route is cheaper than the all-rail route.

Exam. Taylor: Is that a good breaking point?
Mr. Belnap: Yes, that is all right.

Exam. Taylor: Recess at this time until 2 o'clock.

(At 12:30 o'clock, p. m., a recess was taken until 2 o'clock p. m.)

[fol. 2328] Afternoon Session

2:00 o'clock p. m.

J. O. McClintock, resumed:

Direct examination (Continued).

Exam. Taylor: All right; gentlemen. Are you ready to proceed, Mr. Belnap?

By Mr. Belnap:

Q. Will you now take up, Mr. McClintock, and describe generally the merchandising activities of the Chicago elevators who are here protesting?

Exam. Taylor: Before he does that, he has one question that I asked him off the record if he would distinguish between public and private elevators.

Mr. Belnap: All right.

The Witness: I referred earlier to the elevator capacity under which the protestants in this case operated; and mentioned too that a certain percentage of this capacity was what was known as public storage. I mentioned also that there was some 50,000,000 total storage in the market. The common distinction in the recognized trade here betwen the private and public elevator is that the private houses are to a very large extent associated with the individual's business who either owns or operates that house. It is not public in the sense that it is required under the rules here, the rules of the Chicago Board of Trade to [fol. 2329] qualify that elevator as the space through which delivery of grain can be made in satisfaction to future delivery contracts. May I give a little example: the hedging element enters into the handling of grain; and our next delivery month in Chicago is the May futures. Corn we are buying today, and the time up to that delivery period, is hedged. When the delivery period comes around we exercise or decide whether we shall make delivery of that grain to fulfil that contract that we have made in the futures market, or buy back the contract that we originally made as a head and transfer it to some more deferred delivery

month. But if we elect to make delivery of this cash grain to satisfy this open contract that we have in the future market, then the rules of the Board of Trade prescribe the requirement of the house through which such deliveries can be made; and in that sense I speak of them as public houses, covering the requirements of the rules of the Chicago Board of Trade; and they are also public houses in that they are available for the public to obtain service.

By Mr. Belnap:

Q. Would you give an example of the kind of business in which these people are engaged, in what you call private houses?

A. With an exception or two, I would say that the private elevator capacity owned or operated by others than those which I have mentioned here, the protestant in this case, was used primarily in connection with their own business. In most cases it is associated, operated by people who have [fol. 2330] a manufacturing activity, for example B. A. Eckhart Milling Company here, who is one of the protestants. They have storage, but it is used generally in relation to storage of their own raw material, such as wheat, which is later converted into the manufactured product. There are other examples, such as the malt houses, and some of the larger manufacturers here, such as the Corn Products; they have storage, but it is used mainly in connection to their own manufacturing operations. There are some exceptions to that. Star Grain Company, for example, own an elevator, and it is located on the water. They can load both in and out by water, but they are not a public house in the sense that they would fit the example that I referred to awhile ago.

Q. Now, Mr. McClintock, will you take up the merchandising of grain, cash grain in the Chicago market?

A. In general, the practice of the elevators who are represented in this case, or their business is conducted along similar lines, the elevator capacity is used to store grain intermittent between the time we accumulate the grain and the time when we may make final disposition of it. It goes without saying, of course, that we do not sell all the grain here today; and there are periods that we recognize as accumulating periods, and periods that we recognize as distributing periods. But all the time it is the effort of the

operator or the elevator to keep the plant so functioning [fol. 2331] that his business will be as consistent as conditions under which he operates will permit. The ideal situation, of course, is to have a rather consistent overturn. In other words, our profit, if any,—our ideal is based on volume. That is the whole fundamental of the grain business, it is based on the volume handled. There are many conditions that enter into that situation: crop conditions in one section of the country compared with the other, and transportation conditions, determine whether or not Chicago is keeping itself in the channel where the producer moves his grain to the consuming territory.

In this respect, it so happens that the territory affected here by river transportation is in the same territory as that affected by these intrastate or, as they are called in the grain trade, the lake local rates. If we would refer to Mr. Tannehill's exhibit No. 3, you will note that he has outlined the territory here from which lake local rates apply. It is noticeable there that that is the territory that is most closely related to the Chicago market in the terms of geography. In other words, if it could be said that there is any territory that is more definitely related to Chicago than any other territory, it would be this precise area.

Q. Taking that area, Mr. McClintock, let us start out with the buying of grain in all the various ways you buy it; take up the customers involved, the delivery, your futures contract, how you merchandise your grain, and your ship- [fol. 2332] ments; let us have that as a background.

A. Of course, we have the mechanism of our Board of Trade here. It is not divisional to the extent that you could say this group performed that service, and some other group performed that service, and hit it right down to a fine line. But in custom and practice it has worked out somewhat to that degree. We have the elevator and shipping interests here who are protestants in this case, are interested in the rate situation from the standpoint of getting grain into Chicago, and we are interested also in a very emphatic degree in having rates in effect that will permit us to escape with this grain after we get it in here. Now, the custom pursued in a general way in accumulating supplies into Chicago, has been about like this; we have one group of individuals and firms who confine their activity quite largely to bringing grain into the market. Those are termed receivers.

Q. Mr. Brennan was an example of a receiver, was he not?

A. Yes, Mr. Brennan; and as a matter of fact, I think the list that he presented and stated he was representing could all be classified in this category. On the other hand, you have the elevator group which I just mentioned, who do not to any great extent engage themselves in the business of going out to the country elevator and engaging in bringing that business into Chicago. Their activity is confined to buying the grain here at Chicago, scoring it, and [fol. 2333] merchandising it to all the possible points that the rate structure of the market will permit us to reach.

Explaining that custom a little further, the elevators, just for a concrete example,—we will say the day after the market closes the commission houses will go to the tables of the elevators, and secure the bids on which they can work overnight. We give them a bid. Sometimes that is called a call bid, or a bid to arrive. In that case it must be posted on the Board.

Q. In which case?

A. In the case that it is designated as a call bid, or a bid to arrive. To qualify as a call bid, it must be posted on the board.

Mr. Day: Do they mean the same thing, a call bid to arrive?

The Witness: Not exactly. If you just let me go a minute, you will see. That bid that is posted there on the board may have been posted by Continental Grain Company; that may have been the bid that was posted by us; that is an indication that we are willing to pay that price for corn or wheat or whatever it may be. But that does not mean necessarily that grain is not sold into the market, or that we would be unwilling to pay more for the grain than what is indicated on the Board. So, as I say,——

By Mr. Belnap:

Q. Right there, you say that is your offer to pay that for [fol. 2334] the grain; at what point?

A. Delivered Chicago. And I say, that call bid does not always represent the price which I would be willing to pay for corn if it was offered, or that some one else might be

willing to pay for it. So that the receiver may be certain as to the highest price that he can sell corn at, after the close of the market today up until the time the market opens in the morning, they go around to the various elevators, and they get what Continental is willing to pay for grain, and they get what Rosenbaum Brothers or any of the buyers that is interested in that particular activity. And with these bids that they obtain from us they transmit them to the country elevators. And for that service in the event that they acquire grain, there are rules covering the commission on which they are permitted to charge for that service. They look upon it as though they are performing a service for the fellow in the country by getting in that bid, and a service to the elevators for acquiring the grain for us.

Q. And what is that rule?

A. Well, it is known as the Commission Rule, I believe is what they call it. The rule on corn and wheat, I believe, is a cent per bushel on the rail grain; oats, I believe is three-quarters of a cent. And on barge grain and lake grain the commission is one-half cent.

Q. That is per bushel?

[fol. 2335] A. That is per bushel. Now, that is the customary procedure that joins up the activities of the two—I don't know whether you could call them elements or divisions, or whatever they are. They just happen to be engaged in that particular class of business, and they dovetail into one another in the fashion I have described.

Q. What happens,—you have got a call bid out; you say that is always posted on the Board?

A. If it is a call bid, it is posted,—if it is a posted bid.

Q. You hold yourself out to take grain at that price for what period of time?

A. Well, that bid is posted during the session, and after the session as well. Usually a posted bid is not so many cents or so many dollars; the bid is in relation to the futures. For example, we would be bidding now on the basis of May corn; and we would say that we were willing to pay a half cent under the May futures for corn delivered Chicago. That bid would be accordingly posted, which would indicate that the seller could know even during the session how the market was going on, and sell us corn at half a cent under whatever the quotation of May corn might be.

By Exam. Taylor:

Q. At that particular time?
A. At that particular time.

By Mr. Belnap:

Q. That is the futures, and corn is fluctuating during that [fol. 2336] time?
A. That is right.
Q. It does after the close of the session?
A. After the close that bid, if it is left there, it is predicated to mean that corn will be taken over night at that basis, relative to the close.

By Exam. Taylor:

Q. For example, one-half cent under the closing bid of corn?
A. That is right; if May corn closed at, we will say, 57 cents, the bid, as regards to that call,—the bid would be 56½.

Mr. Cole: May I ask a question for clarification of something here at this point?
Mr. Belnap: Surely.

By Mr. Cole:

Q. Mr. McClintock, you said that first there were those firms known as receivers, which firms were interested in getting the grain into the market.
A. That is right.
Q. Then, second, there were those elevators that operate like you do; and you said, then, after that, that during the day the commission houses would come over to you and inquire for the bids; now, are those commission houses, this first group that you termed receivers?
A. Rather synonymous, in our language; I meant the same group, the receivers.
Q. When these commission houses or representatives of [fol. 2337] receivers come over to get your bid, which they then transmit to the country, and for their services you say they earn a certain commission which is in cents per bushel according to how the stuff gets in there,—when they buy that grain on that bid, if they are acting as merely commissionmen and commission merchants, do they buy that

for you after they learn your bid, or do they take title to it until it gets in here and then let you know that they got it?

A. The mechanics of that is this: we will suppose some one representing a receiver house would come up to me and say, what are you going to pay for corn; what is your basis on corn? And I will say a half under May. He goes out and buys that corn on his own, and he takes the commission. If half under May at that time means 56½, it means that he goes out to the country and bids 55½ delivered Chicago; and he is the principal in the case. He is the principal in that transaction, as regards the country elevator man. If he elects to sell to me on that bid, he comes to me and sells at a half cent under May corn. And he is the principal in that trade, too, between Continental Grain Company and his firm.

Q. May I ask this, just as a matter of information, at this point: suppose now it is half past two, and I come to you and I ask you for your bid; and you say half a cent under May futures. I learn that; so I got out and I bid in the country for my grain, and the fellow down there gets my [fol. 2338] bid which is a half cent under May, less my commission; that I tell those fellows down there in the country to scramble around and get it for me; and then I don't learn whether I got any corn on that bid until tomorrow morning; and tomorrow I come back and the Exchange is open again, and things are again different; does that bid you told me this afternoon, does that still hold, so that tomorrow when I come and I say, Mr. McClintock, I have got a barge of corn now. Does that bid hold good?

A. In practice it works this way: that receiver knows by the practice that that bid is only good until the opening of the market the next day.

Q. Yes.

A. As a matter of fact, these bids we put out after the close are more or less intimations of what we would be willing to pay. We do not agree to take a million bushels of corn at that price. He so protects himself by passing the bid out as such, that he thinks he can sell corn at 56½, permitting him to pay 55½; and when he hears from the country next morning that he can buy 5 cars of corn at 55½ and sell to me at 56½ he calls me up to see if the bid is still good; and we take the grain.

Q. Then he calls you up to sound you out again, and then goes back in the country?

A. Generally they have contacts down in the country, have their own people and connections established down [fol. 2339] there. A great many of them have wire connections, so their connection is about the same as if they were sitting in the office. That is the way it works out in practice.

Mr. Cole: Thank you.

By Mr. Belnap:

Q. And these receivers that offer you grain, do they get some received by rail, some received by barge, and some received by lake?

A. Well, we have bought—I don't know that we ever had bought any grain from a receiver that came in by lake; I do not recall that we did. But we have bought a lot of corn through receivers, a lot of grain, I will say, some corn, from receivers; and we buy most of our corn that we buy to arrive through the receivers.

Q. Made both as to rail corn and as to barge corn?

A. That is right.

Mr. Enoch: Is the testimony that he buys barge corn through a receiver?

The Witness: Yes, sir; that is correct.

By Mr. Enoch:

Q. What is the difference between this call bid and what you just referred to, the two arrive; or is there any difference?

A. No, I wouldn't say there was any difference in the practice. I think it is referred to in the rules as a to-arrive bid.

By Mr. Belnap:

Q. Well, when you are dealing with a receiver, and he [fol. 2340] calls you up the next morning and asks you if you are still in the same mind, and you say, I am, and he says, here is five cars, and you say, I will take them, where does he have to deliver them?

A. We generally specify 10-day shipment. In other other words, the terms of that contract specifies the price, the grade, where it is to be shipped; in this case it is to be

Chicago, and it will be Chicago weights and grades; and the date, the time within which that grain is to be shipped.

Exam. Taylor: I do not see just how you could have delivery in any May futures, the next morning.

The Witness: Well, you see, we couldn't under those terms. But deliveries of future contracts are generally made up from the accumulations that you have made prior to the delivery date. See, you can deliver any time during the month. The corn that I deliver on May contracts I might have acquired in January or February.

By Mr. Belnap:

Q. Well, is this corn you acquire from receivers to be shipped 10 days, is that what you consider a future contract?

A. No, not in a strict sense. It is a future delivery contract in cash grain; it is not a future delivery contract in the sense that it is a futures transaction, made in the futures market. We have the futures market.

Q. That corn is cash corn; you know you are going to get [fol. 2341] it; the physical corn is going to be delivered to you?

A. That is right.

Q. And it will be delivered to you whether you operate a private house or a public house?

A. Oh, certainly. In other words, when we buy that corn we may not have any definite idea just exactly what we are going to do with it. We do hedge it, however; when we buy the corn, we hedge the corn.

By Exam. Taylor:

Q. Here is what I couldn't understand, Mr. McClintock: you had been talking about the amount of the commission, and you said that you based the bid a half cent under the May futures on corn. The future bid was 57; a half cent under was 56½. This man was to get a commission of one cent, so he could buy at 55 delivered; now, that is on a May future.

A. The price is predicated on the trade of the May futures at the time the transaction was made. Now, with us trading in May is going on now.

Q. Yes, but he has to deliver that within 10 days.

A. Actually, the shipment from the country, the contract is that he has to ship that corn from the country within 10 days of the contract; that is the terms. So I bought that corn today, and 10 days from now it was shipped from the country; well, in two or three days after the time it was shipped it would be in here; and then in another two or there days it would be down at the elevator and be unloaded. But I cannot deliver it on May contracts until the month [fol. 2342] of May comes around.

Exam. Taylor: It is all right now.

The Witness: So far as the May futures contract is concerned, it terminates in May so far as my cash contract is concerned with this receiver, it terminates in the 10 days. I have to carry that corn until I can deliver on the futures contract.

By Mr. Belnap:

Q. You use the May future only as a convenient means of stating the price you are willing to pay for cash grain?

A. That is true. The nearby future, whichever way, is the index that we use in determining the value of grain.

Q. When it comes to naming the price, you use May future only as a convenient means of naming the price at the close of the market; if May future was 57, and you buy one-half cent under, you could just as well say, I will pay 56½?

A. We could just as well, and generally do.

By Exam. Taylor:

Q. You would never use July at this time as the base price for cash delivery?

A. There are times when we would use July; supposing a receiver would come to me and say, what will you give me for June corn, for June shipment. I would not predicate my bid on the May price, because May will have expired before he ships that corn. So I will use the future that is most closely related to the shipping time of his corn. That is the way I could avail myself on hedging two transactions [fol. 2343] together, which in that case we would use July.

By Mr. Brown:

Q. Would it clear it up any if you said this: that if you have January corn now you had hedged in May,——

A. In fact, that is what it is.

Q. —you sell that corn tomorrow and take off your May hedge?

A. I think maybe I didn't make that quite plain: you see, the fact that I bought this 5 cars of grain and hedged it on the May future does not necessarily obligate me to deliver that corn on that future. I can buy back that futures contract. My reason for that, suppose tomorrow or the next day I sell that particular corn, in which event I would buy back my futures contract.

By Mr. Belnap:

Q. That is, by hedging you mean when you buy this grain you obligate yourself to deliver an equal amount of the same at some later month?

A. If I have not bought the contract back.

Q. But at the time you buy the cash grain, is that when you hedge it in the futures market?

A. That is right.

Q. And when you hedge, you immediately sell an equal quantity for future delivery?

A. That is right; I am obligated to make delivery only in the event I do not buy that future delivery contract back.

Q. Then, if before May comes along you bought the corn that is coming to your elevator, you have resold it,——

[fol. 2344] A. In which event, then, I would buy back my futures contract.

Q. At the same time you sell cash grain?

A. That is right.

Q. And is it that situation, the sales and resales which lead to the——

A. Well, that is the mechanics that is involved in the merchandising of grain; because the business is handled in a volume, but it would be impossible to match up a sale of corn identical with the purchase of that particular corn and do it at a time when you would not be exposing yourself to the general fluctuation of the market. We might buy a hundred, two hundred corn some morning maybe 5 or 10 minutes before the market opened. There would be very little possibility of going out and merchandising that corn before the market opened. So we hedge it, and in that way we protect ourselves against the ups and downs of the market, whatever they may be, until such time as we can go out and merchandise the grain.

Q. Hedge until you can go out and make a profit on the grain?

A. That is right.

Q. That is your business?

A. That is our business, and that is the general fashion on which the grain business is conducted. And it does not necessarily mean that the grain has to come to Chicago to employ that same method of marketing. The Omaha merchant, the Texas merchant, the Indianapolis grain mer-
[fol. 2345] chant, whoever he may be when he buys grain in a general sense he uses the same system of hedging operations that we do.

Q. Did I understand you to say if an Indianapolis merchant buys grain out in Illinois and shipped it direct to Indianapolis, at the time he made that purchase he would at once sell an equal amount of futures on the market?

A. That is right.

Q. Is that practice followed as to cash grain you had them deliver to your elevator, regardless of the method of transportation used, what rate you pay?

A. Oh, yes.

Q. That has nothing to do with it?

A. The origin or the method or the mode of transportation used in getting it to our elevator has nothing to do with the advisability of hedging that grain; we do as a practice hedge it.

Mr. Enoch: May I ask a question?

Mr. Belnap: Yes.

By Mr. Enoch:

Q. Could you hedge it if you had a private house and not a public house?

A. We could hedge it, but we could not make delivery. We in that case would be in the same position as the man in Indianapolis.

Q. So that it is not practical to hedge the grain that you put into your South Chicago elevator without it being regis-
[fol. 2346] tered as a public elevator?

A. Oh, yes. No man in the grain business would think of operating in any other fashion; just as I explained to you, when an Indianapolis man out here, when he buys 50,000 bushels of corn in Illinois, or Indiana, wherever he may have bought it, he hedges that corn, although he knows at

the time he cannot effect delivery out here; he uses that as an insurance against the fluctuation of the market.

Mr. Enoch: May I ask you off the record.
Mr. Enoch: May I ask you off the record:

(Discussion outside of the record.)

By Mr. Belnap:

Q. As I understand it, your discussion off the record with Mr. Enoch, the question of whether you receive any grain into a private or public elevator has nothing to do with whether you hedge it or not?
A. Nothing at all.
Q. You hedge it in either event?
A. Absolutely.

Mr. Enoch: That was not my question.
Mr. Belnap: Then you ask him on the record.
Mr. Enoch: I will take it up with him on cross-examination.

By Mr. Belnap:

Q. Well, as to grain in a private elevator in Chicago which has been hedged, that grain can be delivered on a future contract, can it not, by cross town switching to a [fol. 2347] public elevator?
A. Yes, it can.
Q. Take this same price situation about which you talked when you were naming the price for grain delivered to Chicago, to be shipped within 10 days, on 56½ cents per bushel; can you offer that same price to the country elevator man?
A. No; if we bid the country elevator man direct we deduct the commission the same as the commission man does. In other words, the bid to the country is the commission less than the gross bid we have put out.
Q. That is the rule of the Board of Trade?
A. It is.
Q. If you wanted to you could bid to the country elevator grain, could you not?
A. Oh, yes.
Q. But under the rules, if you got a posted bid up here on the 56½,——

Exam. Taylor: No, he had it at 57; keep it at 57.
Mr. Belnap: It was half a cent under the May future.

Exam. Taylor: And the May future was 57 cents?

The Witness: That is right.

Mr. Belnap: His posted bid is 56½ cents?

The Witness: Yes; it would be a half cent under that future.

By Mr. Belnap:

Q. 56½ would?

[fol. 2348] A. Yes, delivered Chicago.

Q. The rule is that when you first post that bid of 56½ cents here, delivered Chicago, you won't offer more than 55½ direct to the country elevator?

A. That is correct.

Q. In the case of barge shipments, where the commission rule provides half a cent a bushel only, it would be the same?

A. In that acse it would be the same, only it would be a half cent instead of a cent.

Q. In other words, if you got 56½ cents posted here,——

A. The bid to the country would be 56.

Q. Both bids being delivered Chicago?

A. That is correct.

By Exam. Taylor:

Q. In the latter case the commission is yours, is it not, if you buy it direct from the country elevator?

A. Well, yes; we earn the commission; that is in the price. If we buy the grain direct, then we have made the commission in the price by virtue of having bought the grain for a half cent less than the delivered price here in Chicago. We make the half cent that the commission man would have made if it had come through him.

Q. Is that a rule of the Board of Trade?

A. That is a rule of the Board of Trade.

By Mr. Belnap:

Q. When you make a bid for cash grain delivered at Chicago, take rail grain, what consideration do you give [fol. 2349] to the inbound rate structure on that grain, and how does that affect the price either as you name it or as you arrive at it?

A. Well, we guage our buying with what we can at the time accomplish, or hope to accomplish with the billing that this shipment involves.

Q. Maybe you better go forward then and tell what you do with the grain after you get it, Mr. McClintock; and then go back to the point of what consideration you give to the billing when you buy it.

A. Mr. Belnap, I think we might bring this whole thing out here: I started on a little display here that I think maybe we can tell this little story as to how the Chicago shipper is affected and what consideration he gives to billing, by referring to this situation that we are confronted with right at the present time. I don't know just exactly what point you want to bring out here.

Q. I would rather get a general description of the business before we go into the particular effect of this situation, Mr. McClintock.

A. Well, as I said, the interests of the shipper in the Chicago market is based on the volume; that is, he is interested in getting as much volume through the elevator, and that means through the market because he acquired his grain in proportion to the general volume of business that is going through the market. And our interest in that is not [fol. 2350] just to buy grain and put it in our elevator down here. Obviously, we have got to do something with it before we have completed a transaction that compensates us in any degree. Now, there is two things that an elevator operator wants to do, especially a public elevator operator; he wants to have stock that are suitable for delivery on future contracts, and he wants to have shipping rates out of the market that will permit him to reach as many destinations as can possibly be reached through the gateway that he is operating, which in this case as affects the protestants here is Chicago. Before we would consider buying any grain, we must first give consideration as to what we can do with that grain; and usually that situation is governed by the outbound rates that the market provides.

But we are confronted with a little different situation, and I am going to get back to this point here, whether you like it or not, Mr. Belnap. It goes back here to this exhibit number 3 of Mr. Tannehill, where he has outlined the territory from which this intrastate corn moved. Now, the picture there is very plain, that that is the territory that is

most closely related to the Chicago market in every respect. If you could say that you had something laying right in your lap, that would be where the business from Chicago—that would be how this business would be termed. Because that is strictly Chicago territory, if Chicago has any territory that could be called strictly its own. Now, as I said, [fol. 2351] the elevator man buys the grain because he wants to merchandise it beyond the point where he is accumulating it. And the thing that determines how much or what territory he can reach is determined by the rates; and normally that is considered from the standpoint of what the outbound rates actually are. But here we have a situation that the character of the inbound rates are such that they do not entitle us to the outbound rates that is commonly accepted as the means of escaping with your grain from a concentrated point or a rate-break point.

Now, this river corn that we have been talking about here, a very large percent of it originates in this same territory. Now, the elevators here have been able to take quite a large volume of this lake local billing corn here at a price equal to, or very nearly equal to the price at which the very best billing that we have coming in here would bring. Now, that is brought about by the fact that we have the escape out of Chicago with this particular billing which provides a penalty on the outbound shipment by rail,—we have an escape over the lakes. So the lake billing corn having a cheap rate in here, and which in my judgment was the means of attracting a lot of corn into Chicago, we have that escape by virtue of the fact that we have acquired a substantial volume of business over the river that gave us the billing with the two things that I told you that a grain man wanted to do: he wanted to have in his elevator a stock of grain that was deliverable on future delivery contracts; [fol. 2352] he wanted a stock of grain that he could either merchandise out of here by water or by rail. Now, I think that these elevators—it is my opinion that the elevators represented here as protestants in this case are related to the Chicago Board of Trade as a union, in that we are both interested in a volume. We have the situation here that does provide a volume for the Chicago market; and we have the situation, as I just explained, that provides us an escape with both kinds of this billing. Now, if the protestants are unsuccessful in their efforts here,——

By Exam. Taylor:

Q. By protestants, you are talking about the Chicago protestants?

A. Yes, Chicago protestants; elevator protestants. If we are unsuccessful here, then this barge grain that has been coming in here and enjoying the reshipping privileges and qualifying it as proper billing for delivery on future contracts, in case we lose them it throws the barge billing corn in the same category as the lake billing corn, but even subject to a more severe penalty. In fact, it ceases to be a penalty when you get it up to 8½ cents; it is a blockade. In other words, then the shipping interests which are the protestants, and I might mention right here that the records of the weighmaster's office showed that last year the protestants in this case here, so far as the Chicago elevator interests are concerned, shipped out of this market 83 and a fraction percent of all the business that was [fol. 2353] shipped out of Chicago in the form of grain.

By Mr. Belnap:

Q. What was the bushels involved; do you have that?

A. Well, out of the total shipments of 115 million and some odd bushels the total shipment of the protestants was 97 million plus. It figures out 83.44 per cent. Taking up the thought there, where we left off, that leaves the elevators for whom I am speaking here in the position that all the grain originating within this territory prescribed here,—and it is a very large producing section; as I said, the corn most favorably located to come in to Chicago, it leaves the elevators that I represent here in the position that regardless of whether we acquire the grain by barge or on the lake local billing, it has all got a blight on it for the two things that an elevator must be able to do out of this market. I mean have billing that can qualify on a future delivery contract. And I think I ought to explain here that under the rules here when you make a delivery on a future contract you have to provide the recipient of that delivery with billing that will take him out of here on the reshipping rate.

Q. Would you explain that just a little further; what reshipping rate, and to where does the rule require?

A. Trunk Line territory, I believe. There might be other qualifications in it, but we are obliged to provide bill-

ing that gives him an escape here with that grain on the [fol. 2354] reshipping or proportional rates that are in effect at the time of the delivery.

Q. In other words, make legal delivery on one of your future contracts?

A. Take an example: if I deliver corn that I have brought in here by barge, in case that these rates that we now enjoy are taken away from us, if I tender that corn on delivery, whoever receives that corn would have to pay, if he elected to ship it to Trunk Line territory, 34½ cents. The rule says that I have got to give him billing that takes 26 cents. If I deliver corn that came in here on lake billing, say from Morris, Illinois—that has been a popular point—from Morris, Illinois, that has paid a 5-cent intrastate rate in here, and I deliver corn on that bill and he orders it out of here to New York, the shipper is billed on the difference between 5 and the Illinois proportional rate in here; and he in this case would be the shipper. But I effected that delivery on that grain in the house, in the elevator. So the recipient of that grain would be the shipper when he moved it out, and the Rock Island Railroad would bill on him. If I gave him this 5-cent local bill in order to make that shipment against, the railroad would bill him for 4½ cents. Yet, the rule says that I have got to give him billing that will get to New York for 26 cents; where in effect, he would be paying 26 plus 4½ cents per 100 that the Rock Island would bill him on [fol. 2355] for it. So the elevators are stymied if they cannot acquire some billing in their own front yards that permits them to do the thing that it is necessary to do to operate a public elevator in this market.

Q. Insofar as those two illustrations which you gave,—insofar as the elevator which delivers on future contract, if you deliver barge grain and it had no privilege under the local rate you would have to make up the difference to the extent of 8½ cents if you were going to deliver that grain?

A. That is true.

Q. Against your contract price?

A. That is true.

Q. And in the case of the lake local you would have to make up 4½ cents as against your contract price?

A. Well, it would work out this way: when the shipper found out he had billing he was penalized on he would come

back to me and call my attention to this rule and say, "Here, you didn't give me billing that I could get out of here on in the fashion that the rules prescribe, so you owe me 4½ cents."

By Exam. Taylor:

Q. Would the result of that penalty be the fault of the carriers, or because of the Board of Trade ruling?

A. It would work out like this: you can see, otherwise—here is how it would work out in practice: the Board of Trade rules, as I understand them, are made to protect the public. When a buyer comes in here and buys a future contract and accepts grain on it, he is entitled to know what it [fol. 2356] is going to cost him to get that grain out of this market. And that is the reason the rule was prescribed, fixing the obligation on the party that delivered that grain. Otherwise, you can see that the futures market here would be useless; because, although he might buy corn at 57 cents, which would mean that that was the price that the corn would cost him in store at the elevator in Chicago; but he is not going to use that corn in the elevator in Chicago, he is going to ship it out; so he is entitled to know what it is going to cost him to ship that corn.

By Exam. Taylor:

Q. Does the Board of Trade rule mean that this corn that moves in here must be able to move out on the cheapest rate to the eastern destinations, which in your case is 26 cents to New York, for example?

A. In that case it would be the cheapest rate so far as the rail is concerned.

Mr. Enoch: Isn't this the fact: that while you, if you want to deliver on a future contract barge grain, have it move at only the difference of what you paid in, of 8½ cents; Mr. Bacon, with his contract grain, if he delivers on a future contract has to pay the whole 8½ cents, hasn't he?

The Witness: If he delivered it that would be exactly so; that is, if the recipient of that elected to move that corn out by rail.

Exam. Taylor: Five minutes recess.

(A short recess was taken.)

[fol. 2357] Exam. Taylor: All right, Mr. Belnap; proceed.

By Mr. Belnap:

Q. Mr. McClintock, do you on occasion deliver on your future contracts, instead of buying back the contract?

A. We do.

Q. It is your desire to always be in a position to be able to do that, is it not, if you want to?

A. Yes, absolutely.

Q. Now, would it be possible to make your contract for future deliveries unless there was a definite understanding as to the kind of freight rate that grain, if delivered, would take out?

A. Well, I can see where a future delivery contract is a contract—it is a purchase and sale contract. I can see where the party on the other side of the contract would be at a very decided disadvantage if he didn't know what rate it was going to cost him to get out of Chicago with the grain that he was taking on that contract. And that is the reason why the rules provide that the seller of that contract must provided the buyer with a certain kind of billing.

Q. That particular billing is based on the proportional to New York, Trunk Line territory?

A. That is right.

Q. If a man actually wanted to go into Central Freight Association, you would have still made a good delivery whether you gave him trans-Mississippi billing or Northwest billing or Illinois billing?

[fol. 2358] A. We consider it so.

Q. That is, he hasn't a perfect assurance what he is going to pay; but he does know this, that if he goes to Trunk Line he can go there on the 26-cent basis?

A. That is correct.

Q. You have described this situation generally; now, do you have a peculiar condition that you have not described when you come to the last month for deliveries of the old crop and then look forward to the first month for the delivery of the new crop?

A. Well, there is a situation that exists between adjustments that might occur between old crop and new crop periods which might make the delivery privilege, I wouldn't want to say the only market, but perhaps the best market that would be offered for disposing of the grain that you

might want. And as I have said before, we determine what we buy, or how much we buy, by what we can do with it. An example in that situation would be, for example, the adjustment between—well, we will take wheat, for example; which we have in effect right now: the new crop futures on wheat are being quoted; July wheat, which represents a new crop month, is selling at a discount under the May wheat, which is still an old crop month. Those spreads vary quite considerably. We have seen the nearby future of the old crop sell at even a much higher premium than now prevails.

[fol. 2359] Exam. Taylor: Just a minute, before you go into that: your old crop futures might be any kind of wheat; it might be Northwest wheat, it might be trans-Mississippi wheat?

The Witness: That is right.

By Exam. Taylor:

Q. It might be Southwest?

A. Yes.

Q. Whereas, your July wheat would necessarily be Southwest wheat, wouldn't it?

A. No; we do not designate them insofar as the trading month is concerned as old and new crop; but they fit that condition. We know that there is no new wheat produced that is available in May for delivery on May contracts.

Q. Do you have any Northwest wheat that could be delivered in July, New Northwest wheat?

A. No, I would not say so. But there are various kinds and variety of grain that would be qualified for delivery on the future contract. I have not seen the market for three or four days; but the last time I looked at the market, July wheat was selling about 2½ cents under May.

Now, I would just like to go ahead here and explain that we buy wheat during April and May and hedge it in the May future. Now, if we could merchandise that wheat out during that period, all right; but if we cannot merchandise it the likely thing to do is that we will deliver on that contract, because the next delivery contract is, I think, at the [fol. 2360] present time, about 2½ cents under the May. So from an elevator standpoint it would work out that if we transfer or hedge—if we could not deliver and could not sell it, then, our next escape would be to transfer our

hedge from May to July, in which event it would lower the inventory value of our wheat to the degree that July was selling under May. So that is why it is desirable at all times to have your stock covered as much as possible with a billing that will qualify for delivery.

By Mr. Belnap:

Q. After you get the grain in your elevator, Mr. McClintock, where do you merchandise it?

A. Well, in a general way, Chicago territory is New England territory that we reach by rail and by water and rail out of Chicago. And when I say water and rail, most of that business is done through the Georgian Bay ports. Some goes through Buffalo and Oswego and into the Trunk Line territory; we merchandise both by rail and by water and rail to Buffalo. And we go into Central Freight Association territory; and we go into—well, that would be included in the Ohio River points; and occasionally we go beyond those points into Southeast territory. But generally our territory is east and northeast of Chicago. We are able to sell industries located near by Chicago, the white corn industries, such as Milwaukee and Battle Creek and Kankakee; the corn industries located at Harris, Illinois, and Indianapolis, and all points like that that have industries in that particular territory.

[fol. 2361] Q. When you sell cash grain you deliver somebody, on what basis do you sell it?

A. Well, we sell it on the basis of transportation costs, figured against the price that we want for the grain in Chicago. For example, if we should get an inquiry from a mill at Indianapolis that wanted to buy, we will say 50,000 bushels of wheat, and he would probably specify in that inquiry that he wanted a special kind of billing; maybe he wanted a billing that would permit him to go to Pittsburgh, or Columbus, or some point like that, with his product cheaper than he could on some other kind. So if we get an inquiry like that, I get in touch with our traffic man and he tells me whether we have got that kind of tonnage, and what we can deliver the corn through Indianapolis to these destinations that he refers to. If we are selling to a man in New England, there is any number of substantially large industries in the interior of New England states, which commonly take the Boston rate point. And on those we sell at a de-

livered price, taking into consideration in our price what it costs us to reach those points.

Q. You sell at a delivered Boston basis?

A. That is right; if we are selling to——

Q. Just in that situation, you would then be obligated to deliver the grain to the man at billing which would take it to Boston at no cost to him?

A. That is correct; we sell it on the Boston freight rate, [fol. 2362] that is the practice. If we are selling a man in Trunk Line territory, the same practice generally works out.

Q. Except you are then selling——

A. On the 26-cent New York rate, or 24-cent Philadelphia rate, or some point he might specify in his inquiry; but at all times our delivered price is based on the cost of delivery to there; Chicago cost, plus getting it there, so far as transportation—we sell to Buffalo on a c. i. f. price delivered Buffalo. In that we take into consideration the cost of the lake transportation to Buffalo.

Q. Is that the usual basis you sell to Buffalo?

A. That is the usual practice we sell to Buffalo. We do sell grain beyond Buffalo; we sell it c. i. f. Buffalo, we sell it f. o. b. Buffalo, we sell it base Philadelphia or New York ex-lake out of Buffalo; which means that the corn has had a water movement into Buffalo.

Q. You can only do that in the period of open navigation?

A. Either that, or we may have to put some stocks over there preceding the close of navigation to merchandise out during the winter months.

Mr. Brown: When you say over there, you mean in storage at Buffalo?

The Witness: In storage at Buffalo.

By Mr. Belnap:

Q. There is a very substantial storage of grain at that point, is there not, which goes out via lakes?

[fol. 2363] A. Yes, there is a very substantial amount of grain which moves not only out of Chicago but from other lake ports, such as Milwaukee and Duluth, Fort William, Port Arthur,—all of the ports this side of the lakes.

Mr. Enoch: In these last remarks you are thinking of wheat more than you are of corn, are you?

The Witness: No, sir; if I was thinking of anything at all, I was thinking of corn.

By Mr. Enoch:

Q. Not out of Fort William?

A. Not out of Fort William; but so far as the Chicago interests are concerned, as applied to shipments out of Chicago, I would say the amount of corn was very much greater than the amount of wheat shipped out of Chicago.

Q. But any corn stored at Buffalo; that is what I had in mind.

A. Oh, stored corn?

Q. Yes, at Buffalo?

A. Well, there is a lot of corn shipped out of Chicago and stored at Buffalo.

By Mr. Belnap:

Q. There has also been substantial quantities of corn come down the lake from Duluth, have there not, in recent years?

A. To Buffalo?

Q. To the lower end of the lake?

A. Yes, Duluth has shipped a lot of corn during the past two or three years.

[fol. 2364] Q. Is it the practice in the trade that much of that grain will come down during the period of open navigation, going into store for the purpose of being redistributed in the winter months, during the close of navigation?

A. There is quite a practice along this line; and that same condition applies to putting grain in Georgian Bay elevators preceding the close of navigation, with the purpose of merchandising it into New England territory.

Q. During that season of the close of navigation, if you were to merchandise out of your Chicago elevator, will you be selling in competition with that grain that would be in store at Buffalo?

A. During the winter months, if we want to make sales to points that can be reached from Georgian Bay or Buffalo, or any of the other eastern ports, we are in competition with that business during the winter months, when our only escape, our only means of participating in that trade is by rail.

Mr. Brown: Right there, will you permit a question, to clear up: is it not also customary during the winter months to have grain stored in boats at Buffalo that were sent down near the close of navigation?

The Witness: Yes; I said in storage; I meant to include in that quite a substantial volume of grain that is sent out of Chicago and other lake ports as well to Buffalo and retained in the lake vessel during the winter period months, [fol. 2365] maybe during the whole period, or maybe only during a portion of the period. But there is a substantial volume of business handled in that manner.

Mr. Enoch: May I ask a question right here for clarification: Mr. McClintock, am I in error? I understood you to say that during the season of open navigation arrangements are made to store grain at Buffalo, at the foot of the lakes, at the Georgian Bay elevators, so that during the closed season of navigation deliveries may actually be made on contracts, on sales in Eastern Trunk Line territory, and on deliveries and completion of sales in New England territory; aren't you the one that does that storing—isn't that your grain?

A. Well, we have done some of that business. But as a rule, we don't want to in the fall move all of our business over to Buffalo and Georgian Bay ports; we still want to remain in business in Chicago.

By Exam. Taylor:

Q. But that opportunity is open?
A. But that opportunity is open.

By Mr. Enoch:

Q. Mr. McClintock, as to the same thing, just after that, Mr. Belnap asked this question: he asked whether during the season of closed navigation, if you were in competition in completing the sales with the merchandise that had been stored at Buffalo and at Georgian Bay ports; Mr. McClintock, are you actually in competition with that merchandise that is stored there?

[fol. 2366] The Witness: Yes; because there is other merchandise stored there, probably a great deal more stored there by people that operate exclusively in Buffalo, than the amounts that might be sent there by us.

Mr. Belnap: Aren't you going into cross-examination?

Mr. Enoch: No, I just want to clear this one thing up; it is not cross-examination, I just want to get it right where it belongs on the record. It may hurt, but it is not cross. Don't you generally carry enough of your own stocks there so that you can make your own deliveries in that territory?

The Witness: No, I wouldn't say that we would regard it as good business to put as much corn over there as we might anticipate that would be used. Because the grain business has a peculiar way of changing its channels. That is, we might get corn over to Buffalo that appeared all right; but there might be a condition develop that that corn might be worth more at Chicago, freight considered, than it is at Buffalo. As a matter of fact, we got that condition right now.

Exam. Taylor: Can you hold the balance of it for cross-examination?

Mr. Enoch: I would like to suggest, inasmuch as this is particularly a corn case, we speak about corn, or oats, or barley, or wheat, rather than to use the term grain.

Mr. Belnap: I don't understand it is a corn case;
[fol. 2367] I understand that these rates are applicable on grain, all kinds.

Mr. Enoch: Your understanding is absolutely right, as far as the application of rates is concerned.

Mr. Belnap: Corn has been the largest volume moving, but they applied to other grains.

Mr. Enoch: I still think you ought to refer to corn, rather than include them all.

Exam. Taylor: That is because the bulk of the grain from the river points, barged to Chicago is corn?

Mr. Day: No one who testified here said there was anything but corn.

Mr. Belnap: Mr. Benton testified and showed the wheat.

Exam. Taylor: Go ahead.

By Mr. Belnap:

Q. Do you sell grain to those who store it at Buffalo, and who are engaged in the same line of business you are?

Mr. Enoch: I object to that question; I think it ought to specify whether he is talking about corn?

By Mr. Belnap:

Q. Do you sell all kinds of grain, the various species, including corn?

A. Yes, we do.

Q. To those people?

A. We sell to people over there that not only are in the merchandising business, but we sell quite extensively to some of the large processors over there who employ per-
[fol. 2368] haps the same method of storage over there that we have just referred to. They might buy half a million or a million bushels of grain for shipment out of Chicago just preceding the close of lake navigation, and use it in their business as they needed it during the winter months, and would unload it from the lake steamers only at the time they did require it.

Exam. Taylor: Now, gentlemen, I wish you would proceed in a more orderly fashion and allow Mr. Belnap to complete his direct, so far as possible.

Mr. Belnap: I am perfectly agreeable, Mr. Examiner, if they are only wanting to explain something; if they want to quarrel with the witness, then I would prefer that we——

By Mr. Belnap:

Q. During this last year Continental received a substantial volume of grain via barge on the Illinois River, did it not, Mr. McClintock?

A. Yes, sir.

Q. You have some of that grain still in storage at your elevator in Chicago?

A. We do.

Q. Do you sell some of that grain on c. i. f. basis to people at Buffalo who are engaged in the same business you are?

A. We have.

Q. And who during the winter months will be competing with you, they via rail and you via rail, to Trunk Line territory?

A. That is true.

[fol. 2369] Q. Well, when you come back to this question of buying and selling grain from the standpoint of billing, you have told us what kind of billing you have to have in order to comply with futures contracts, and the kind of

billing you held yourself out to supply when you sell cash grain for delivery in the East; now, how does that affect you when it comes to buying grain, particularly from the standpoint of the kind of billing it will have, when it arrives in Chicago?

A. Well, I would just like to read a little figure into the record here; we have these figures that I quoted awhile ago where the protestants would ship 97,000,000 bushels of grain out of Chicago in 1939, compared with a total of 116,000,000 bushels. I got these figures from the official records of the Board of Trade, and as broken down between rail shipments and lake shipments. Out of this 97,000,000 bushels,——

Q. Now, this is all grain, is it?

A. Yes—44,000,000 was shipped by rail and 52,000,000 bushels was shipped by lake. That is round figures on it.

Q. That is for the calendar year?

A. That is for the calendar year.

By Exam. Taylor:

Q. 1939?

A. 1939. Now, that rail shipment there is quite a little higher than some of the figures indicated here by—I don't just recall what witness it was—that referred to the cancellation of our barge billing, a very large percentage to [fol. 2370] the lake outlet. I would just like to explain here the condition that permitted the shipment by rail out of here in the substantial volume that these figures indicate. These lake local rates, or intrastate rates, whatever you want to call them, went into effect in the spring of 1939; April, I believe, prior to that time, I am not in position to say how long but it occurs to me that during the year of 1938 there were not lake locals in effect, with the exception, I believe, of a short period that the Rock Island had in a lake local rate from a few points. So the billing that we employed, a very large percent of it, in making these 1939 shipments, was acquired in 1938, and the early spring of 1939, before there was any penalties inflicted on this territory adjacent to Chicago. It would have been quite impossible for the elevators to engage as extensively as they did in rail shipments out of here had it not been for that fact. While it is true the records show that this lake local billing was used to some extent to certain destinations, yet

based on our own experience that was—that situation was rather insignificant, compared to the total volume of rail shipments out of Chicago. Now, billing is an important thing to the Chicago market and the Chicago dealer and the elevator man in particular. The elevator man is interested in the rate situation up to Chicago——

By Exam. Taylor:

Q. Well, then, you are talking about the Chicago elevator man and not the country station elevator man?

[fol. 2371] A. No, the protestants, I will say. The protestants in this case are interested in the rate up to Chicago.

Exam. Taylor: We have some farmer protestants.

The Witness: Well, the Chicago protestants; will you put it that way. I think the farmer is interested too. The to Chicago, because it is the transportation cost that meas-Chicago protestants are interested in the rate structure up ures the distance from the point where this grain is produced up to Chicago. In other words, it reflects the advantages or disadvantages, whichever it may be, as to the possibility of getting corn into Chicago. The elevators are interested in getting that corn into Chicago. That is why I say that we are interested in the rate structure up to Chicago. We are likewise, and very definitely so, interested in the rate structure out of Chicago. I think I explained that in some degree awhile ago, just what our interests are. And in that respect I think the interests of every member of the Chicago Board of Trade, receivers and shipping interests, should be parallel. We are interested in volume. It is fundamental, it is the fundamental on which we thrive or decline; and the rates out of Chicago definitely influence the possibilities that is offered for the shippers, the protestants in Chicago, as to the possibilities that they may have as grain merchants. It should be our—it is to our interest to keep Chicago in the path or in the channel through which grain moves from production to consumption. And rates, [fol. 2372] transportation costs are the factors that determine whether or not we are in that channel, the degree to which we are in it, and the time we can remain in it. Now, that is a fundamental, as I see it, that is definite and eternal. That situation has just got to exist; otherwise the market declines in proportion to the disadvantages that it suffers in the way of rate structure. There is a condition there

that I might say that is of very definite concern to the producer. We have a contract market here at Chicago; it is at a rate-break point. If the producer is to gain any benefits from low cost transportation, that condition must be reflected in a low cost up to a contract point. Beyond the contract point the consumer would benefit in relation to the cost out of that contract market. The corn intrinsically has the same value in Chicago, based on the theory that it was all going to be consumed in Chicago. The Chicago futures market is the barometer that determines the value, quite largely at least, determines the value of the grain in that particular point where that contract future trading is done. The value of that we just established there awhile ago, 57 cents,—now, the farmer under conditions that are most beneficial to him can get that 57 cents less costs that are involved in getting his grain up to this point. It would not matter if the rate was reduced beyond Chicago, it would still be that relative relation to that future. In the case that we have here at hand it is, in my judgment afforded a means [fol. 2373] of attracting additional business through the Chicago gateway, with the resultant beneficial effect to the producer in the territory where it is produced. The protestants in this case are desirous of retaining that condition, and the condition that relates to the inbound corn and the possibilities that this proceeding involves as to getting that corn out of Chicago. To me it appears that we have under the present rate adjustments here a very satisfactory condition from the standpoint of the Chicago grain merchant whether he be a receiver or a shipper. We have varied modes of getting the grain into Chicago, the principal ones under discussion being the water transportation into Chicago, and the rail transportation into Chicago; and I believe the records disclose that the corn that moved into Chicago, the amount of corn moved into Chicago in 1939 was exceeded in volume by only two railroads. It has become, and as the record indicates, is of increasing importance all the time. We have been able to pay the producing section—when I say we, I mean the elevator interests here have been able to pay full market price for that corn, as there was no penalties inflicted on the outbound movement. We have been able to utilize the corn that came in here on these intra-lake local lines for the reason that with that feeling we had an escape across the lakes, and a small percent of it to the destinations shown in the exhibits.

[fol. 2374] Now, what will happen in the event that we are in the future denied the reshipping privilege on barge billing as we now enjoy leaves quite a few uncertainties; but it seems to me that there is a substantial investment in properties along the Illinois River; the operators will attempt to use them, regardless of the outcome of this case. And then we will be obliged to take the escape that we have formerly used for our lake billing corn, use it as an escape for our barge billing corn, in which event it will lessen the demand here for lake billing corn and penalize, in my judgment, the receiver, the producer who enjoys these lake locals in this manner; the elevators, if they participate in that business to a degree that they want to acquire corn for rail shipment out of here, will be obliged to buy that corn on the Illinois proportional basis,——

By Mr. Belnap:

Q. I don't think you have explained that in the beginning, Mr. McClintock; maybe you better stop and tell us how you buy that, as against the lake local on the Illinois proportional basis.

A. Up to the time, or during the time such as now when we have had this barge billing that is qualified to do these important things that an elevator wants to do, this lake local corn has sold at or very close to the price that the most preferred billing that exists sold for. In other words, having this escape out of here by lake, we were willing so long as there was a normal business going on out of here [fol. 2375] by lake, to pay prices that were above—that were competitive with other billing corn; what I mean, competitive based on what you could do with it. And when you were going out later that was just as good a billing for you as if you had a 12-cent Illinois proportional, or river or barge,—whatever it might be. The corn sold at a price at or near premium; but when you got up to a point of where you had to anticipate what you were going to be able to do with that billing, this corn sold at some discount.

Q. That is, the lake local corn?

A. That is the lake local corn.

Q. Explain in relation to this previous description of how you bid for corn.

Exam. Taylor: Using the 57 cents.

The Witness: Well, we will suppose we were still paying 57 cents for choice billing, the billing you could pay the most for.

By Mr. Belnap:

Q. Yes.

A. If there was a consistent movement of corn going out via lake, that corn, quality considered, would sell at the same price.

Q. Sell to you at the same price?

A. That is right. We would pay the same price for it. If we were going along near the end of open navigation and were building up, maybe accumulating stocks for win- [fol. 2376] ter distribution, we endeavor to discount that corn. We either bought it at a discount, or didn't buy it.

Q. How do you do that; how do you express your discount?

A. In the prices.

Exam. Taylor: It can best be stated in cents per hundred pounds; and the example on barge grain you buy at one-half cent under the 57 future?

The Witness: All these figures we had in here is by the bushel.

By Exam. Taylor:

Q. By the bushel?

A. Yes; if we were willing to pay 57 cents for what would be considered the most desirable billing——

By Mr. Belnap:

Q. You started at one-half cent under May?

A. 56½ cents; the spreads, you know, vary considerably on these lake locals. They vary all the way from— these lake locals and the Illinois proportional, they vary from one-half cent a hundred, I believe, up to 5 cents a hundred.

Q. All right.

A. Perhaps on the half a cent bill, we would inquire, if a receiver would come up to us and say how much will you bid for this corn on lake billing? All right; what is the lake billing, we ask him; what is the differential? All right, he will say one-half cent a hundred. Maybe it would

not be enough to quibble about. But if it got up to where it was 5 cents a hundred, or 4½, or 4 cents a hundred, then [fol. 2377] we would discount that corn in price. Now, that discount would be based on what conditions we were figuring our operations from.

Q. I want to first find out how you discount it, the fact?

A. Discount him in the price.

Q. Take that one-half cent situation; if because of conditions, whatever they might be, you were insistent on buying it on the Illinois proportional basis, and it came from a lake local point at which the lake local was one-half cent under,——

A. The discount then would be one-half cent between lake local and Illinois proportional.

Q. Would that mean you say this is lake billing, I will pay you a cent under?

A. That is correct; inasmuch as the buyer assumes the hazard that is involved in having that lake local bill on hand.

Q. That is the way you do it?

A. That is the mechanics of it.

Mr. Brown: Has he said what he conceives his best grade of billing?

Mr. Belnap: No, I don't think so; that was the general question. I asked him, and he got a little ahead of himself.

Mr. Brown: The witness has said several times he bought it on the best of even lake billing.

The Witness: I refer generally, in saying best billing,—I refer to the billing that we can do the two things that we want to do; it is qualified for delivery on a futures [fol. 2378] contract, or it is qualified for shipment out of Chicago on the going proportional rates.

By Mr. Brown:

Q. Without any additional penalties?

A. Without any additional penalties, yes; that is the answer. That is what I consider good billing.

Q. That would be even rate billing?

A. That would be even rate billing; and barge billing as it has been applied in that respect is even rate billing.

Q. So that when you buy corn from a receiver, and also when you bought other grain, do you inquire as to the billing that is going to be offered with that corn always?

A. That is correct.

Q. Then, you fix your price?

A. That is correct.

Q. And your price that you generally post has a limitation on it?

A. Oh, yes; if it is a posted bid it is specified that your bid is for even rate billing, or Illinois proportional billing, or lake billing.

By Mr. Belnap:

Q. It does specify that?

A. Yes.

Q. You said that presently you do not, or this last year you have not discounted the lake local billing, except fractionally; do you recall during the course of the year what has been the range of that discount that you reflected in [fol. 2379] the price quoted?

A. To the best of my knowledge, I do not believe that lake local corn has ever been discounted more than a half cent a bushel. Now, there may be some exception; that may not be wholly true. But during the latter part of the year 1939, I am certain that lake local corn, lake local billing corn has not been discounted more than half a cent.

Q. Now, when you go into the period of closed navigation, does that situation change any?

A. Well, it changes from the elevator man's point of view.

Q. I am talking about from your point of view, yes.

A. Yes; it changes from the standpoint that we are then accumulating billing that we know positively that we will have no escape with until the opening of navigation the succeeding spring; and therefore we are careful about acquiring billing or accumulating any substantial volume of it, at least that has any penalty attached to it for delivery or for shipment out of Chicago by rail. And carrying the thought that I was on awhile ago into the summer months that now prevail in the winter months, since we will have to use our barge billing out across the lakes, that absorbs the outlay for the lake local billing that we have formerly used it for. As I see it, if the elevators in Chicago remain in position to give the eastern railroads out of here any business by rail, and we are denied the privilege of using our ex-barge billing, we will then be forced [fol. 2380] to buy this lake local billing corn on the Illinois

proportional basis, or discount it in price to a degree that it will absorb the difference between the lake local and the Illinois proportional. Now, if I am correct, the effect will be just what the Indianapolis man and the man from Decatur said they wanted to happen; that that would divert corn back through their channels, instead of coming to Chicago, which was the condition they complained about.

Q. Why would it do that?

A. The effect of the lake local rates are that it raises the price at the point of shipment, naturally. That is—freight costs being the primary factor that makes up the difference between the Chicago price and the price at the point of production, is transportation. So if Morris ships up here on a 5 cent rate instead of a 9½ cent rate, the dealer in that community, the dealer and the community down there, either one or together, get the benefit of that difference.

Q. So long as you do not discount it at this end?

A. So long as it is not discounted, and to the extent that the discount is involved, if any. If we buy on the Illinois proportional basis, although the railroads may be hauling it in here still for 5 cents, if we buy it on the Illinois proportional basis it lowers the value of that corn at the point of shipment, where it again goes back into competition—to the competitive point where the Indianapolis dealer [fol. 2381] and the Decatur dealer and the other outside markets that were in here testifying that they were disadvantaged by this situation; that will put them back to where they pray to be. And that will have the effect of affecting me as an elevator operator, as affecting the producer, as affecting the commissionman or the receiver; and it seems to me like about everybody that is interested in this case, except our competing markets. It will help them.

Q. That, as I understand you to say, will flow from the fact that there will necessarily be a recession in the country point prices?

A. That is correct.

Q. As to corn which is offered for rail shipment?

A. That is right.

Mr. Enoch: Well, now, you mean country point prices along the river, don't you?

The Witness: I mean any place.

By Mr. Belnap:

Q. Where the lake local is——

Mr. Enoch: The balance of Illinois, that is not contiguous to this river,——

The Witness: Mr. Enoch, you show here, or there was introduced, and I believe by your witness, yes,—we have the picture right here; I don't know whether he counted the stations, but I notice that there was an official count made of the stations that enjoy the lake local rate into Chicago; and I believe the number of them was 375 sta-[fol. 2382] tions. Now, you know I am pretty sure that all that territory in a general way was a heavy producing section before these lake locals came in effect. You know too, perhaps about what the annual volume per elevator would be in those towns. You know it covers a lot of bushels, those 375 stations. Now, by virtue of having these lake local rates into effect you have benefited, unintentionally or not, the producer in that section to the extent of the difference betwen this lake local and your former Illinois proportional rate.

Mr. Enoch: Don't expect me to say yes to that; in spite of the fact that you may think I know nothing about it, I cannot agree with you. Because you are assuming that the Chicago price on which you are basing your country origin price, less the freight rate, is going to be the same in all circumstances, and not affected in any degree by those adjustments in inbound rates.

The Witness: I say generally that the Chicago market is influenced, is the influence which determines the price that the producer down in that section gets for his corn; and the relation to the Chicago market, and his price is measured in transportation costs.

Mr. Enoch: Now, I say if you assume that the fluctuations take place, going up and down at that Chicago price, are not affected at all by changes in these inbound rates,——

The Witness: I do say that absolutely.

[fol. 2383] By Mr. Belnap:

Q. Is there much attention paid to futures trading, except as to the requiring of the outbound advantage?

A. The futures trading contracts in this market have

always been very highly respected, because the participant in those contracts felt secure in that the rules provided him the necessary protection that would justify him in participating in. And this rule as relating to rates was one of the important ones. In other words, the rules fix the obligation of the seller in that contract to provide the buyer with the protection of the reshipping rate out of here.

Q. That rule relates only to the outbound rate?

A. That is true.

Q. The future trading is not affected by the inbound rates, is it?

A. No, sir; that is an obligation that is assumed by the person making delivery.

Exam. Taylor: Let us go off the record a moment.

(Discussion outside of the record.)

By Mr. Belnap:

Q. Mr. McClintock, I want to ask you questions about this grain business on the river; I am going into the steps how it is handled, who handles it; tell us about how the protestants happened to be interested in that business, what they have down there, facilities and investments.

Exam. Taylor: Chicago protestants.

By Mr. Belnap:

Q. Chicago protestants; when I use the word protestants, [fol. 2384] I am always referring to that.

Exam. Taylor: I think you should stipulate which one.

Mr. Belnap: The Chicago protestants.

The Witness: Well, speaking for the Continental, we have located on the Illinois River, we own an elevator at Naples, Illinois, Havana, LaSalle, and we operate one under lease at Peoria. Norris Grain Company own elevators; they own a greater number of elevators, and the houses they own, I believe are located—they operate one under lease at Havana, and they own a line of elevators from Pekin, Illinois, up this way, including Pekin, Chillicothe, Henry, Hennepin, and Ottawa. I believe that represents the ownership, so far as the Chicago protestants are concerned.

By Mr. Belnap:

Q. You have just recently built an elevator at LaSalle, have you not?

A. We did recently build an elevator down there; it was completed about around the first of October. That house is a 75,000 bushel capacity elevator. It was so built and consideration given in its building for fast handling. It is equipped to receive and at the same time load about 5,000 bushels per hour. This elevator at LaSalle is located on the south bank of the Illinois River, just south of the city of LaSalle. It is equipped to receive grain by truck, and to make shipments by water. It is not on a railroad. Our elevator at Havana is equipped to receive by truck and by [fol. 2385] rail, and equipped to ship by water and by rail. And we do both. The house at Naples is a small house, not located on a railroad. The house we operate under lease at Peoria is a concrete elevator of about 125,000 bushel capacity. It is equipped to receive by truck and by rail, and to ship by water and by rail; and we do both. The Norris houses, I can only give you a general description of them. The house at Pekin is larger, and it is on rail and water and is equipped to receive by both truck and rail. And it is my understanding that they engage that house in both types of business. Norris' other houses are similar in operations to the ones I have described at LaSalle.

Q. What is your investment in the elevator at LaSalle?

A. Including costs of site and preparations of the ground on the water front, and everything, in round numbers, $50,000.

Q. And some of these other elevators represent a greater and some a somewhat less investment?

A. Yes. Of course, the houses vary in cost. If you are going to build a new elevator, the size is a determining factor, and the site, and the water front. The elevator at Norris and Pekin is a considerably larger type elevator; and, of course, the cost of such a house would be much greater.

Q. Speaking generally, most of these houses have been located on the river, with a view to river movement?

A. That is true; with the possible exception of the Pekin house; I think it could fairly be stated it was originally [fol. 2386] built for the purpose of engaging in all types of business that might be coming through the Peoria market.

But the rest of them are built for the purpose of accumulating grain and distributing it through terminals.

As far as our interests are concerned, in river houses, we acquired them merely to use as an auxiliary of our terminal operations. It is a means of acquiring volume for our terminal efforts here.

Q. The Continental Grain Company also built a house at Seneca?

A. We built a house at Seneca under a contractual arrangement with the Allied Grain Dealers' Co-operative Association.

Q. Are you selling that house to the Allied Grain Dealers' Co-operative Association?

A. We are selling that house to the Allied group; yes, sir.

Q. And the basis on which you are selling it to them is what?

A. We sold them the house on a five-year payment plan. The terms of the agreement is that they are to set aside half a cent per bushel for every bushel of grain that passes through the house, to be used to liquidate the contract price of the house, which it is estimated that can be done within approximately five years.

Q. The contract price was your investment, plus the carrying charges?

A. The contract price was the actual cost of the house, supported by material costs, and other costs; and they are [fol. 2387] to pay, I believe it is 4 per cent on the annual unpaid balances. Now, there is a provision there that in case the Allied do not fulfill their obligations under the contract, then the money paid during the period shall be applied as rent.

By Exam. Taylor:

Q. Well, this one-half cent per bushel, is that not taken care of in the price that the Allied Co-operative people pay the farmer for the grain?

A. Well, it is taken out of their profits, I presume. The money that they—I don't know what they are operating on, but say they were operating on a cent and a half marginal profit down there, then, they are presumed to set aside a half cent of that for the purpose of applying on the obligation in this contract. In other words, if they handled 500,000 bushels of grain down there they will at the end of the

year owe on this contract a half cent on the 500,000 bushels, so far as that particular year is concerned.

By Mr. Belnap:

Q. As to that matter, is the situation any different than your house in LaSalle; when you buy grain at LaSalle you have a margin in there which in part covers the cost of your owning that house?

A. Well, it is our intention to maintain an operating margin down there that will pay the overhead and depreciation on the house.

Q. Do you seek some return on your investment as well?

A. Most assuredly.

[fol. 2388] Q. Instead of paying rent, you are seeking a return on your investment?

A. That is true.

Q. Now, to go on with that contract, the Allied Co-operative Grain Dealers obligate themselves to sell the grain they ship from that house to Continental Grain Company?

A. Yes; during this five-year period, there is a provision in the contract that during this period the Allied is to sell the grain to the Continental Grain Company.

Q. Is the price at which they are to sell fixed in the contract?

A. Well, that price is measured by their operation at Morris. As a matter of fact, the way it works out in practice, when I bid Allied for grain I bid on a basis delivered Chicago, and I make no distinction as to whether that bid applies on Seneca grain or out of Morris; the bid is all the same.

By Exam. Taylor:

Q. Is there any penalty if the Allied Co-operative people would sell their grain to somebody else?

A. No penalty prescribed.

Q. They are supposed to sell all of it to you?

A. That is true, during the five-year period.

By Mr. Belnap:

Q. That is on your bid, whatever it may be, that you post for river grain?

A. That is true.

By Exam. Taylor:

Q. Wouldn't it be a violation of their contract if they did sell it to somebody else?

[fol. 2389] A. Yes, I guess it would; violation of the spirit of the contract, at least.

By Mr. Belnap:

Q. Now, are there also elevators with river facilities at St. Louis?

A. Well, there are elevators located on the Mississippi river at St. Louis. The Continental Grain Company operate the Missouri Pacific elevator in St. Louis, and it is on the water and has means provided for loading to the water and unloading from the water. The other elevator that is located on the river there is the Burlington elevator, operated by the Norris Grain Company. It is equipped to load out by water, but I do not believe it is equipped to receive by water. That is my understanding.

Q. What is the situation in Kansas City?

A. To the best of my knowledge, there is only one elevator on the river at Kansas City. That was an elevator built during the last two years, I believe. It was built by the city of Kansas City, as I understand; and it is under lease to Hart, Bartlett, Sturder Company, who operate it.

Q. That company is equipped to ship by barge?

A. They are equipped to ship by barge, and do ship by barge.

Q. On the Illinois River, are there some other elevators than the Chicago protestants?

A. Yes; there is elevators located at Pekin, operated by W. W. Dewey & Sons. I believe the elevator is owned by [fol. 2390] Dewey. One at Lacon, Illinois, operated by the Terminal Grain Company; and their headquarters is at St. Louis. There is one located at Seneca, the one which we just mentioned. And one elevator in Morris operated by the Allied Group, and one operated by Mr. Finnegan. I believe Mr. Finnegan designates his house as Patonville, but they are in the Morris area.

Q. Also an elevator at Montezuma, on the river?

A. Yes, I believe there is a small elevator down there; I am not acquainted with the type of elevator, or its importance.

Mr. Enoch: Now, is there an elevator at Montezuma that is engaged in this business; that is what we want to know.

By Mr. Belnap:

Q. Engaged in shipping by river?

A. Yes.

Q. You have seen Mr. Schimmel's exhibit 67, have you not, which shows river rates are somewhat below the rail rates from these Illinois river landings to Chicago?

A. I have seen the exhibit, and I am familiar with the rates.

Q. Now, will you take up and describe for us the methods, the customs followed by the Continental Grain Company in buying of the grain which moves on the river to Chicago?

A. You mean from our own houses?

Q. Both your own houses and anybody else's you buy from; just give a complete story on it.

A. Well, at our own house,—we will take LaSalle as an example: we maintain a personnel at the river to perform [fol. 2391] the clerical duties and to make proper contacts with the country elevator, as well as the man to operate the physical part of the house. We give our man down there who contacts the country elevators in the territory surrounding LaSalle a bid on corn, a price that we are willing to pay for corn delivered at that elevator. That price is based on what we are willing to pay for corn at Chicago, less transportation costs, less trimming at Chicago, and less the margin that we endeavor to maintain at LaSalle to cover our operating overhead there, depreciation, and a reasonable return on our investment.

By Exam. Taylor:

Q. That includes your commission?

A. We have no commission down there, Mr. Examiner. The Commission rules that we refer to here, as applies to the handling of cash grain in Chicago, are involved only in instances where the transaction is made on basis of Chicago weights and grades, or either one.

By Mr. Belnap:

Q. What species of grain do you buy down there?

A. Well, it so happens that the principal species of grain in the LaSalle area is corn. We have handled a substantial

volume of beans down there, considering the fact that we only operated the house about three months. We are willing and ready to buy any kind of grain that is offered. That is what we built the house for, to buy the grain that is produced in the LaSalle territory. And, as stated, LaSalle happened to be in that territory where its main production [fol. 2392] is corn. And that applies quite generally in the Illinois Valley.

Q. Have you had transported for Continental on the river any grain other than corn and beans?

A. In 1939?

Q. Or any recent period?

A. We have had wheat transported on the river, and oats too. As a matter of fact, we handled a little dab of oats this year; it was very insignificant.

Q. That is a matter that depends on crop conditions?

A. Yes, crop conditions, and depending on whether the oats are selling on a Chicago basis or not.

By Exam. Taylor:

Q. Well, Mr. McClintock, in buying at this LaSalle house that you are talking about now you deal with other elevators in the neighborhood, rather than direct with the farmers?

A. That is right: we deal with the established grainmen in that area. Now, the area is not definitely defined by any boundaries. In our experience, a very large percent of the corn, or whatever kind of grain it might be, comes from within a radius of 30 miles. That is not the extreme. We have had it to come much farther than that.

Q. Did you ever have it come direct from the farm?

A. You mean, do we ever buy direct from the farm?

Q. Yes.

A. I will have to answer yes to that, with a little explana- [fol. 2393] tion. There was a gentleman that came in there, and he was really in the trucking business; but he happened to be a farmer too. And our buyer down there had the impression that he was a dealer. That was when we first opened the house. We did buy some corn from him, but only on that one occasion. As a matter of fact, we had a meeting with all of the elevator people in the territory within 30 miles, or within a greater distance of LaSalle; they were invited in and we discussed the matter in which we intended to do business, and explained to them that it was our intention to originate the business through them.

They in no sense represented an agent of ours. We merely made them the bid; and like any grain dealer, he will lay down all the bids that he gets from various markets, and he will measure those bids in terms of transportation costs and he will accept the one that is most profitable to him. Maybe they are equal; then he decides whom he likes best, maybe, and gives them the business. But that is the basic principle on which this business is done. And it should be remembered that these people do not act as an agent for us. We do not have any dealers, but we are there to buy all the grain that is produced in that territory. If the economics in handling grain business makes it practical for that elevator to give us the grain business through him, he delivers it there; and if he doesn't then he does not.

By Mr. Belnap:

Q. It all depends on the price you can bid?

[fol. 2394] A. Absolutely.

Q. With how many country elevators do you do business in the LaSalle territory?

A. I just counted them once; I get a report from our accounting department showing the people that have open contracts with us down there, and I counted them up one night; I think it was around 37; 37 country elevators. I think that was probably the extreme. Around that number.

Q. The country elevator man guarantees the title to grain he delivers to you, does he not?

A. That is true. We think this about the country elevator man: as I said, we recognize the fact that we haven't got the facility down there that can take the place of the service of the country elevator man, that the country elevator man is performing to his people in the community. We recognize that nature has to be accounted with. Such is the case right now. We think that the country elevator man performs a useful service in the community that he lives in; and we think too that that country elevator man can perform a service for us that we cannot buy. And maybe we are selfish in keeping him in there; I don't know. But we think he has a definite place in the picture, and we are leaning backward to see that he stays there.

Q. How are the transactions handled when you buy grain other than that purchased by you from the country elevator man?

A. We make them a price basis delivered Chicago. In [fol. 2395] water terms that is c. i. f.; that is, all charges being paid up to the elevator side, which includes in the case of Chicago a trimming charge. That is absorbed by the seller of the grain.

Q. Now, do you give that bid to receivers for the Chicago Board of Trade?

A. We do.

By Exam. Taylor:

Q. Well, isn't it true that title to the grain at LaSalle, for example, passes from the country elevator to your company?

A. You say at LaSalle—that is true. We settle for that on the basis of LaSalle weights, and so forth. But he said for others.

Mr. Belnap: You are talking about the LaSalle grain again?

Exam. Taylor: Yes.

By Mr. Belnap:

Q. Now take up the situation I have asked about, the other situation where you buy grain from somebody who has an elevator on the river, other than the Continental.

A. Well, we make them a price delivered Chicago by water; and as I said, the terms by water are c. i. f. Chicago, which means that the seller pays the insurance and freight and cost of delivering that grain to the Chicago market. The buyer is also required to charge a trimming cost that occurs at Chicago in connection with the unloading of that grain.

Mr. Enoch: May I ask right there, is Allied typical of [fol. 2396] that situation?

A. Yes, they are.

By Mr. Belnap:

Q. In buying that grain,—let us use Allied as typical; do you buy some direct from Allied?

A. We buy some direct from Allied.

Q. Is that on the basis of Chicago weights and grades?

A. It is.

Q. And in that case, to take our example, when you add the price of 56½ cents that you are willing to pay for corn delivered Chicago, what would that price be that you quote to the elevator?

A. 56 cents.

Q. That half cent difference is because of what?

A. Because of the commission rule here, to arrive rule.

Q. Lowell-Hoit & Company also, or some other commission house, also has a bid on that corn?

A. We have bought a lot of corn from Lowell-Hoit; we have had corn coming from other commission houses. We have bought corn at Daniel F. Price Grain Company here, which runs a commission house; we have bought river grain from Bennett. We do not try to restrict our buying sources; we try to broaden them.

Q. And using this same price situation you had before, what would your bid be to Bennett, for instance?

A. It would be what we term a gross price, or 56½ cents.

[fol. 2397] Q. When a receiver at Chicago accepts your bid for grain, whether it be rail grain or river grain, do you know where the grain comes from, necessarily, when you buy it?

A. No, I do not.

Q. You are satisfied if it is grain that meets your price?

A. As a matter of fact, we don't know where it is coming from, as some general thing; I don't mean to say that I never ask him if I am interested in some particular billing; I might ask him. But generally the bid is 56½ delivered Chicago. And under those terms he can deliver me grain from any place, unless there is a special stipulation or restriction put in, which is not customary.

Q. It is in connection with the lake local, is it not?

A. Yes, it is based on a lake local; he has a lake local bid.

By Exam. Taylor:

Q. You do require to know whether that grain will be susceptible of transporting to Chicago, and from Chicago to New York on a proportional rate?

A. And we arrive at that information by specifying a lake local or Illinois proportional.

Q. But whether it comes from John Jones or some other firm, you don't know?

A. No; nor any particular station in Illinois or Iowa.

By Mr. Belnap:

Q. What barge lines have you used, Mr. McClintock, in bringing your own grain to Chicago, and what barge lines have been used——

[fol. 2398] A. Well, we have used—you mean since my connection with Continental Grain Company?

Q. Yes.

A. We have used John I. Hay Company; we have used A. L. Mechling Barge Lines; we have used Barry Barge Line.

By Exam. Taylor:

Q. When you used the Mechling Barge Lines, that is also tied up with the Allied Barge Corporation, isn't it?

A. Well, Mr. Examiner, if we buy the grain, as I stated, delivered Chicago, then it is up to the seller to provide the means of getting it here. He makes his own selection.

By Mr. Belnap:

Q. You are talking about the barge lines you have used as Continental, as shippers?

A. From our own stations. There have been small amounts of grain that came in here from other barge lines, now. We have bought grain from Dewey at Pekin, and we have bought grain from Bennett that came from Dewey originally; and I believe that it was Lawrence Transportation Company that brought that grain in. Not so long ago we bought a barge of corn out of St. Louis, and it came up here, it was transported by a line that we had never used before, so far as our Chicago office was concerned,—Waterways Transportation Company.

Mr. Day: What was that, corn or wheat?

The Witness: That was white corn.

Mr. Enoch: Was that in 1939?

[fol. 2399] The Witness: Yes, sir; late in 1939—you made your question to apply what barge we used into Chicago?

By Mr. Belnap:

Q. Yes.

A. I think that about covers it.

Q. I understand when you are buying barge grain your bid for it under the present situation is just as good as any bid you put out for the same kind of grain?

A. We consider the value of the barge billing under present applications of the billing out of Chicago as good as any billing we get. We pay a price accordingly; that is, it represents the best price that can be obtained in Chicago.

By Exam. Taylor:

Q. Sometimes known as premium billing?

A. I wouldn't say it was a premium; there are some; there may be in isolated cases a special billing or premium billing. But I would not say this was a premium billing.

By Mr. Belnap:

Q. A rail billing carrying a transit balance would be better than your barge billing, would it not?

A. Yes; for example, there is billing comes in here from Iowa that shrinks considerably into the Mississippi River, Mississippi Valley, even up to Cairo, I believe. If there was business working in that direction, that kind of corn, originating on that kind of billing, limited in quantity as it is, would probably bring a premium; and such billing does frequently sell at a premium.

Q. Is there some billing out of Illinois that carries tran- [fol. 2400] sit balances lower than the reshipping or proportional rates; that is, out of Illinois?

A. Will you restate your question again?

Mr. Belnap: Read it, Mr. Reporter.

(Question read.)

By Mr. Belnap:

Q. I am thinking particularly of Central Freight Association destinations there, Mr. McClintock.

A. Yes, that is true; but at the same time, I don't know whether that could necessarily be called specially satisfactory billing. Although it might take a shorter transit balance than some other billing that we have. I would not exactly consider that from a standpoint of a general operation as a previous billing.

Q. During the season of open navigation are you much concerned with the matter of the inbound billing when buying grain? If so, to what extent?

A. We have not been up to date; for the fact that that would add an outlet for the varied types of billing that we

now get, coming into Chicago. That is, we have Illinois proportional origin billing that comes in here where there is quite a spread between the local rate paid in and the Illinois proportional going out. That territory is confined to a relatively small territory, compared with our total territory. In acquiring that billing we know that we have to go out in a certain manner to recover that tieup, as we call it, between the amount paid in and the Illinois proportional rate. [fol. 2401] We have even rate billing and trans-Mississippi billing which is up in this classification of the more desired class. It involves no penalties anywhere. We can go out lake-rail. And then we have the lake local billing, of course, and the lake billing, and the river billing. Now, our possibilities under the present rate structure out of here have been such that we could acquire that billing and go along with it for quite—with quite some degree of certainty. That is true especially during the open season of navigation here, because our lake shipments during that particular period are much greater than our rail shipments; and we were able to provide an outlet across the lakes and still buy this lake local billing. But as I stated awhile ago, when it gets up toward the close of navigation we begin to be a little cautious about taking on lake local billing. We don't know what is going to happen. We are going to accumulate a stock of corn here that we can only merchandise in one manner, and that is out of Chicago by rail, for the next four or five months; so we are a little bit cautious about the kind of billing we fill our elevator with. We are not certain about conditions next spring, and in the meantime we may want to deliver that corn on future contracts, which we cannot do only with certain defined billing as prescribed under the rules of the Board of Trade.

Q. Or sell at a penalty?

[fol. 2402] A. Or sell at a penalty which can hardly be absorbed in the grain business.

By Exam. Taylor:

Q. In other words, you cannot pass it back to the man from whom you purchased again?

A. We cannot.

Q. As far as our exhibits of record are concerned, one for your company covering a period from May 1, 1939, to January 14th, 1940—there is a similar exhibit for Norris;

and then Mr. Tannehill read into the record some statistics covering a certain period; is it possible to take a specific period of that character and say that is representative of what will be experienced over another calendar year or period of years?

A. Well, it would not be representative. The exhibit that Mr. Tannehill used would not be representative at all; because it referred only to the period of open navigation, or approximately so. And during that time, as I have stated before, the larger percentage of our business is by water. Naturally, after the close of navigation all of our business is by rail. You might just as well try to strike the average snowfall of Chicago for a year's period by taking June, July, and August; that would be fairly representative of the situation. For example, we of course have shipped no grain out of Chicago by water since navigation closed, but we have shipped a substantial amount of grain out of here by rail since navigation closed.

[fol. 2403] Q. Where are you shipping that corn?

A. Well, since this interest started, and that was after the close of navigation, we have shipped or are in the process of shipping a million bushels of corn out of here—I am speaking about Continental Grain Company——

Q. Yes.

A. Out of Chicago to Eastern Seaboard for export.

Q. Where is that corn going?

A. Well, it is going for export to the United Kingdom; others going to Scandinavian countries. It is going wherever corn is needed.

Q. On what basis did you sell that corn?

A. The corn was sold on a c. i. f. basis abroad. And we of course use the cheapest transportation available to us to get the corn to tidewater; and then of course engage the ocean vessels beyond tidewater to the Atlantic seaport; which in this case going to Baltimore we have this 16 cents per hundred; and most of the corn up to date has gone to Baltimore. It so happens that we are applying barge billing on these shipments. I d- not think we could have made the sale if we had not been permitted to use the shipments. In other words, if we had not had the reshipping privilege here on barge grain, so far as we are concerned, we could not have engaged in that transaction.

Q. Why is that?

A. Well, the corn that we had in the house was originated [fol. 2404] either on this lake billing corn or the barge; some minor exceptions to that. By and large, that was our situation.

By Mr. Brown:

Q. Are you talking about lake local?

A. I am speaking about this lake local intrastate billing that comes in here at a less rate than the Illinois proportional. Our stocks were covered by that kind of billing. In accumulating that billing, we of course, were concerned about the outcome of this case, not knowing as far as the barge billing was concerned, not knowing when it might be decided and how it might be decided; but we recognized that the worst that could happen to us would be that we would have to carry that corn until navigation opened next spring and then move it out across the lakes.

By Mr. Belnap:

Q. Instead of giving it to the railroads?

A. Yes, instead of giving it to the railroads. There is a market effect there that I think is quite important; supposing this case had been decided before we got started shipping this corn, against us; then we would have been forced to carry that corn until the opening of navigation. Our position was that we were getting well crowded with grain before we started shipping this corn. We were practically out of the market, so far as buying any more corn. Being able to dispose of this corn at this time and ship it during this period will, of course, enable us to get back in the market and add whatever influence our buying power is to the Chicago market.

[fol. 2405] I would say that was quite generally true with other houses here who engage quite extensively in the handling of river corn. The possibilities there are that situation could probably be duplicate- two or three or four times during the period from the close of navigation to the opening of navigation so long as we are permitted, able to use the billing out in the manner just described. That is my observation, that that is quite important to the Chicago market; because there is a greater escape; and the more grain you can get out of the market, and the more it lends

toward bringing grain into the market. That is very natural. That is just a business situation——

Mr. Enoch: May I ask, now, you are saying there that you could not have made this contract unless you had barge corn, and that it would have gone to some outside—to somebody outside of this country,—Argentine?

The Witness: Well, there is an international situation involved there, Mr. Enoch; and we do have competitors in foreign markets.

By Mr. Enoch:

Q. I bring that up when you say somebody else would have gotten it; I assume you do say somebody else would have gotten it; are you referring to somebody else in this country?

A. I don't think I said somebody else would have gotten it; I said we could not have engaged in it.

[fol. 2406] Q. Well, the people that bought it,—if they had not got it from you they would have got it from somebody else; now, can't you tell me whether it would have been from somebody in the United States, or elsewhere, in the Argentine; and if in the United States, whereabouts would they get it?

A. I stated here that the elevators that I represent, based on last year's operation, handled 80 some per cent of the business out of this market. It is my observation that business, and the territory from which all of the elevators in this market have to originate their grain, is in the same territory that I have to originate the grain that I accumulate. So it is reasonable to assume that all the elevators here were in quite a similar circumstance as that I find myself in; and that consequently the kind of corn, the amount of corn that was sold out of here for export would have been very much less than what was sold out of here.

By Mr. Belnap:

Q. It would have been if you could not have shipped at the barge rate?

A. Yes, that is the point that I intended to make; if the billing situation was different than what we now have it.

By Mr. Enoch:

Q. Will you tell me this, and I don't mean to press this any further: did you mean that some man in Galveston would have got it, in New York, at San Francisco,—or that the corn would have come from a foreign country if somebody else filled the contract?

[fols. 2407-2409] A. I think it is most likely that you will find in this case it would have gone to a foreign competitor.

Exam. Taylor: We will adjourn until tomorrow morning. We will start at 9:00 o'clock, promptly; and the reason you are here so late is because we had so many interruptions and did not get started until 9:30. We will start tomorrow morning at 9:00 o'clock.

(At 5:40 o'clock p. m., an adjournment was taken until 9:00 o'clock the next morning, Friday, January 26, 1940.)

[fol. 2410]

Morrison Hotel,
Chicago, Illinois,
Friday, January 26, 1940.

Met pursuant to adjournment at 9:00 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right; come to order, gentlemen.

Mr. Brown: Before Mr. McClintock takes the stand, I would like to have the record show that the statement I made day before yesterday——

Exam. Taylor: On the witness stand?

Mr. Brown: On the witness stand, was to clear up the application as understood by all interested parties from the time this barge grain commenced to move and up until the present time; and that I appeared as amicus curiae.

Exam. Taylor: Proceed, Mr. Belnap.

J. O. McClintock, resumed:

Direct examination (continued).

By Mr. Belnap:

Q. Mr. McClintock, you have already detailed, dealt with the role which the country elevator reasonably close to the

river plays in the marketing of this river grain; what have [fol. 2411] you to say as to the effect on the country elevator who is removed from that territory?

A. You mean what is the effect on the elevator who is not geographically located to participate in the river movement?

Q. Yes.

A. Well, it is my judgment, and relying too on the testimony given here by competing markets, where it was stated that the activity along the river denied these markets like Decatur and Indianapolis the opportunity to compete in that territory competitively with the river, that those naturally would confine their buying activity in that territory removed from the river, in which event their buying would be more effective, being restricted as it was, or as they indicated, to a smaller area. In other words, they would have to be more vigorous in their buying activity in the area left; and therefore based on that theory, which I think is substantiated by the facts, that the shipper removed from the river benefits to the extent that he has less competition from the territory that is affected by the river; and in the proportion his position is improved to that extent.

Q. That would affect both country elevators and purchasers in that territory?

A. Well, their position in that respect is similar. If it affects the elevator, it naturally affects the producer, because it is through the elevator that the producer market [fol. 2412] is determined.

Q. And the premise for all of that is that the lower cost of transportation by the river placed the Chicago market and those purchasing to store grain in Chicago in a better competitive position in this interior territory in relation to other markets or consuming points, such as Decatur?

A. That is true; the particular territory affected by the barge operations, and the locations where we have this lake local billing; both of those conditions being, as they are, based on cheap local rates to Chicago, naturally tends to direct that grain, lead that grain through the Chicago channel.

Q. Earlier in your testimony you stated that the Chicago protestants were the shippers of 83 per cent of the grain which moved as grain out of Chicago?

A. That is correct.

Q. Does that mean that that same group, in approximately the same proportion, constitute those who buy cash grain, whether it is ex-lake, ex-river, or ex-rail, in the Chicago market with a view to merchandising it as grain?

A. Well, that group does participate in buying grain from whatever source it may originate, or whatever mode of transportation may have been employed to get the grain into Chicago. They are the active merchandisers and buyers, and sellers of grain, as this high percentage would indicate they are.

Q. To be specific, let me ask this: take the 17 per cent [fol. 2413] which was shipped out of Chicago by others than the Chicago protestants; would that 17 per cent include grain which Staley purchased at Chicago, cash grain?

Mr. Enoch: I want to object to that, until we find out what kind of grain we are talking about.

Mr. Belnap: Whether it is corn, wheat, barley, oats, or rye; he gave the figures, 83 per cent in totals, did you not?

The Witness: That is right.

By Mr. Belnap:

Q. Did this remaining 17 per cent which the Chicago protestants did not ship, would that 17 per cent include corn, if you please, purchased by Staley at Chicago and shipped to Decatur; or corn purchased by the Indianapolis merchandiser at Chicago and shipped to Indianapolis, or to Louisville, or wherever he might ship it?

A. Well, I do not think we could confine any particular buying to any particular grain firm. I could not say.

Q. You didn't get my question; all I am interested in is as to what is included within this 17 per cent; you said that the Chicago protestants shipped out of Chicago 83 per cent of the grain which was shipped as grain?

A. That is right.

Q. Now, we have remaining 17 per cent which somebody else shipped out of Chicago?

Mr. Brown: It could not be in his 83 per cent, possibly. [fol. 2414] Mr. Belnap: No, Chicago protestants do not ship that. Now, I am simply inquiring of him as to whether included in that 17 per cent would be the grain which Staley buys out of Chicago?

The Witness: It could be, but not necessarily.

By Mr. Belnap:

Q. Well, now, explain that?

A. Because Staley's business, for example, that he bought out of Chicago might have been included in this 83 per cent of the protestants.

Q. That is, anything that Staley bought from a Chicago elevator would be included within the 83 per cent?

A. Not necessarily; it could have been in either group. He might have made his purchases from some dealer in Chicago that is not represented in the protestants here.

Q. Somebody with a private elevator?

A. Some one with a private elevator; I couldn't say definitely that Staley bought his grain—whether his purchases might have been represented in the 83 per cent or the 17 per cent.

Q. I am simply trying to find out what is included within this 83 per cent and the 17 per cent. Then, let me put it this way: as to grain which Staley purchased from any one of the Chicago protestants, that would be in the 83 per cent?

A. That is correct.

Q. As to grain which Staley purchased from somebody [fol. 2415] who had a private elevator, had the grain in store at Chicago, that would be within the 17 per cent?

A. That is correct.

Q. Do people like Staley also purchase grain from the receiver which is track grain in Chicago?

A. Well, I think they do. I think there is some track stuff sold and reconsigned out of here, but not in any important volume.

Q. Well, if I stop you right there for a moment: does that mean that the grain which comes in to Chicago will either go into your public elevators or into your private elevators, insofar as the great preponderance of the movement is concerned?

A. And then ordered out of those plants when sales are effected.

Q. That is to say, that is the way the business is done, taking it generally, all except a minor fraction?

A. That is right.

Q. So that it comes back to this: that the Chicago protestants, then, will also not only represent about 83 per cent of the shipments out, as far as grain which is sold and

going to elevators, subsequently reshipped as grain,—they buy 83 per cent of that grain?

A. Well, naturally, that is what it works out; we have to buy it before we can sell it.

Q. Now, Mr. Cole has emphasized, both on and off the [fol. 2416] record, the fact that there are relatively few consignors of the grain which moves by barge on the Illinois river; will you please deal with that subject, as to why it is, and what you think the trend of the trade is in respect of that matter?

A. Well, it is true that the business done on the river is done by comparatively few people, when we think about the number of people that are engaged in the shipping of grain from country points. It should be borne in mind, however, that at each of these locations; as for example, LaSalle, that I mentioned, there was some 37 or like amount of elevators participating in that operation as well. Now, just the reason why the river locations are in the hands of a few people, it is a little hard to say. I look at it from this point: it is a comparatively new business; it is a business that has been developed mostly within the past five or six years. It is a new venture. It requires investments. Perhaps the terminal elevator man, who in this instance and among the protestants they do own most of these facilities,—I would say that maybe they were just a little bit better qualified to see the picture, and the possibilities in the situation, having in mind the broader aspects that are involved in the general merchandising of grain; and that he was the leader in this respect, as to locating these houses, quite the same as we know has happened in new ventures in new territories when they were opened up. You can take the Northwest for example: there was a time [fol. 2417] in early days up there when practically all of the country business up there was in the hands of the so-called line houses. They were houses that were owned, maybe one concern located in Minneapolis would own 100, 150 elevators; and I think they do yet in a good many cases. They owned those country elevators out there. It was a job that it took capital and a little bit of foresight, and a little bit of risk, to get the operation going. Now, that trend followed through; it develops where that business was pioneered by terminal elevator men; and then

we have gradually seen that business turn where the independent man got into the business; and finally at practically all those locations you have farmers' elevators. That trend, new as it is down here, being only about five or six years old—you see the trend that is taking place. The first new elevator that was built on the Illinois river is now in the hands of a farm group of elevators; the Allied group, I referred to. That is the first elevator that was built, new elevator.

Q. That is the Seneca?

A. No, that is not the Morris house. We find that now being operated by a group of country elevators in that territory; and it is my thought that as time goes on they will repeat the history they have seen from the beginning: finally the shipping business down the Illinois River will get into the hands of the man who is accustomed to transacting the country business.

Q. In handling the river business in barge load lots, Mr. [fol. 2418] McClintock, is it going to work out so we have an elevator every two or three miles, like you do out through the interior so far as the rail elevators are concerned?

A. No, I don't think so. The modern means of transportation has widened the local territory, that we used to consider local, a radius of 5 to 7 or 8 miles around a town, around a location; that was local territory. But now local territory could be considered 30, 40, 50 miles.

Q. That is from a river man's standpoint?

A. That is from a river house standpoint. That is in connection with the change of transportation. And I don't think we will ever see—we might see two houses in one location, if it happened to be a favorable location from the standpoint of production and hard roads leading into that market. But I don't think you will ever see elevators spotted nearby, three or four or five miles, like we see in the country. It is a different sort of operation. It is more in the aspect of a sort of subterminal. As I say, we built our houses for the purpose of using them as auxiliary to our terminal operation.

Q. That is, the river house is an operation somewhere between the country elevator, the small house serving a small adjacent farm territory, and the big terminal elevator in Chicago?

A. That is right.

Q. Even in connection with your own house that you built at LaSalle, have you done anything about getting the co-[fol. 2419] operatives to take that house over and operate it?

Mr. Cole: I object to that. You admit this is what you are trying to do in the future.

Mr. Belnap: I am trying to show a trend. You placed a good deal of reliance yourselves in a few houses.

Mr. Cole: The very reason I entered an objection, this statement of the prospective plans still in the process of formation has nothing to do with it. I am trying to show what the facts are now.

Mr. Belnap: I am trying to talk about the past; but Continental has its own money in the LaSalle House instead of——

Exam. Taylor: Objection sustained; we want past.

Mr. Belnap: This is as to past.

Exam. Taylor: Are you talking about the past? I thought you were talking about the future.

Mr. Belnap: Maybe my question was not clear; I thought I had just stated what I am trying to get Mr. McClintock to develop is his connection at the time that was developed.

Exam. Taylor: That is all right.

The Witness: Mr. Belnap, I won't say we made any strenuous effort to place the operation at LaSalle in the hands of a group such as Allied; but there was; and I did personally meet with the committee appointed by the elevators in the LaSalle District for the purpose of discussing the possibilities of the local group of elevators, such as is [fol. 2420] represented by the Allied organization buying the house from us on a plan similar to the one that was worked out with the Allied at Seneca. There was some interest, and we were willing to proceed if there was the interest there that indicated that they could make the proposition work.

Now, we made them a definite offer what we would do. We would build a house and sell it back to them on a five or ten-year basis, on a plan quite similar to the one. There was some interest in it, and they went out; there just wasn't anything done about it at that time. There is still some interest in it; but what became of it, I am not in a position to say.

By Mr. Belnap:

Q. I don't want you to go into the future: when you get grain into your house at Chicago, say corn, does it all come into a common, intrinsic value at any given date, regardless of whether it came in via rail, via barge or via lake?

A. That is true; corn has a common value in Chicago after it gets into this market.

Q. And the matter of billing, then, has its effect only on whether you can merchandise it beyond Chicago profitably?

A. The matter of billing is the decisive—it is the factor that determines what we can do with this corn after we get it into Chicago.

Exam. Taylor: Hasn't he gone into that once or twice before?

[fol. 2421] Mr. Belnap: Perhaps so, sir.

Exam. Taylor: That is the outbound billing, and the need for certain kinds of billing; I think that has been gone over.

Mr. Belnap: If you think it is sufficiently covered, we will drop it. You referred yesterday afternoon to the fact that certain statistics relating to disposition of billing for a part of the year were not representative; I think you also said that no one year, even if complete, would be representative of any other year.

The Witness: Well, that is the way the grain business works. There is no pattern you can cut for the grain business and say you used it last year and it works this year; it does not work that way.

By Mr. Belnap:

Q. You had prepared, Mr. McClintock, from statistics compiled by the Chicago Board of Trade, an exhibit which summarizes those statistics, as to receipts and shipments for the period 1934 to 1939, inclusive.

Exam. Taylor: Are they calendar years?

The Witness: Calendar years.

By Mr. Belnap:

Q. Calendar years 1934 to 1939, inclusive; in which you show simply on each page the statistics in bushels for each different species of grain, and in which at the bottom of the page you indicate what variations there have been from

one year to the other in the ratio of water shipments to water [fol. 2422] receipts?

A. That is right.

Mr. Belnap: That is No. 82?

Exam. Taylor: No. 82.

(Protestants' exhibit 82, witness McClintock, marked for identification.)

By Mr. Belnap:

Q. Have you any additional comment to make on exhibit 82, Mr. McClintock?

A. Well, other than the purpose of this, as stated, is to show that the mode of shipments for one year compared with another do not necessarily move in proportion to the receipts. There are many conditions that might influence this situation. For example, if Ohio or Indiana would have a short crop, and the trade in that territory would be obliged to go farther west for their supplies through the Chicago gateway; in other words, the Central Freight Association territory found it necessary to buy most of their supplies in a terminal market such as Chicago, then the rail shipments would show a greater increase although the total receipts in Chicago might not have been materially different from what they were the preceding year. On the other hand, we have had export business that is a deciding factor in how much corn or grain might be moved out on the opening of navigation. If that export business should have appeared during the open navigation, then the receipts coming in to Chicago, moving out, would have been much larger in pro- [fol. 2423] portion than the lake, because they had that market during the summer months. On the other hand, if it is as we have it now, the export business is appearing at the close of navigation, then your rail shipments will show a greater preponderance, comparative movement, than it would have if that export business had not been in the picture.

Exam. Taylor: Pardon the interruption, but via western—via W. S. Lines means by Western and Southern lines?

The Witness: That is right.

By Exam. Taylor:

Q. And E. and S. E. is Southern and Southeastern lines?
A. That is right; that is the way they are correct.

By Mr. Belnap:

Q. That W. and S. is the same as Mr. Benson's shown by individual carriers?
A. That is right.
Q. And East and Southeast, his exhibits which are grouped in one figure?
A. True; it is noticeable on here as you go along and see that percentages of river grain have increased quite consistently and more pronounced during the last two years. In other words, the increase in barge receipts has not entirely been in proportion to the total receipts. They have, I believe in all cases, shown a much greater increase compared to the total receipts of the market.
Q. Has the barge business increased the total volume of [fol. 2424] grain handled in Chicago, in your judgment?
A. I would say it has, quite materially. The present position is indicative of the fact that that will probably increase more from now on, or would have increased more if the present rate structure remains in effect. And I state that on the basis that two elevators, one at LaSalle, and one at Seneca, participated in the 1939 business only during the last three months. Had they been in operation a year, no doubt the barge receipts would have been materially more than what they were.

By Exam. Taylor:

Q. Well, Mr. McClintock, isn't it true that this exhibit of yours, No. 82, really corroborates previous exhibits along the same line, already introduced?
A. Yes.
Q. And is it important in any way, other than showing the percentage?
A. That is about all, and to show the annual relation of shipments to receipts.

By Mr. Belnap:

Q. Has that increased volume at Chicago been in the interest of the market generally, and the public, in your judgment?

A. I think the market, decidedly so; because the fundamental of any marketing place is volume. It is the principle on which they thrive or decline; that is based on volume. And the Chicago Board of Trade, we have a depart-
[fol. 2425] ment of our organization here that the revenue comes entirely from—is based on receipts and shipments; that is, their revenue derived is based on volume. Now, these departments have to be maintained; and of course, if they are not self-supporting then they have to be made up in some other manner, which affects the volume of the Board of Trade.

By Exam. Taylor:

Q. Well, the Board of Trade is not an organization for profit, is it?

A. But they try to keep from losing money; we have such as our Weighing and Inspection department——

Q. All I wanted to get on record is, they are not organized for the purpose of deriving profit?

A. No, they are not.

By Mr. Belnap;

Q. Have the individual merchandisers of cash grain in the market been substantially benefited by increase in their volume and opportunity to increase their profits because of that reason?

A. Well, there is no question in my mind but what the barge business has brought more business to the Chicago market, has brought more business to the Chicago protestants in this case. It has enabled us to maintain the movement of a larger volume through the Chicago market, from which we had the opportunity to benefit as to our individual selves; and as I stated, a movement through a marketing place is good for that location as a market.

[fol. 2426] Q. I am just speaking about the individuals now; and I think you have already stated it is just now letting you participate in an export movement in which you could not participate——

A. Well, I referred to that yesterday, bore on it quite extensively; and that is a condition. It gets back to this: based on our present rate structure, we would have the opportunity to stay in business here the year around. Based on conditions that would exist in case this case is lost by

the protestants, the most that we could do after—say we emptied our elevator just preceding the close of navigation, the best then we could do would be to fill up our elevator and lay over until the opening of navigation next spring. We are definitely limited to that extent. Whereas we could possibly turn our capacity over two or three or more times if we got into an export business of a consistent character like is now before us; we could probably turn the capacity of the house over two or three or four times.

Mr. Enoch: I object to any further testimony; I don't see how anybody can answer any question positively as has been done here this morning, and all of them going to the future.

Mr. Belnap: I am asking what the present benefits are, Mr. Enoch.

Mr. Enoch: I am talking about your last batch of questions. He is saying that if you do not get what you want in this, that the United States is not going to do any more ex- [fol. 2427] porting of corn; just like telling what the price is going to be six months from now.

The Witness: I do not believe I said the United States would not do any exporting; I said the way it affected us, we have a concrete example right here, right now: we had a stock of corn on hand, quite a large stock, that we could not have moved out of this market at all until next spring if we had not had access to the rates that are involved in this case.

Mr. Enoch: That is just what I say; and I do not believe that you, as good as you are, and I think you are very good,—I don't mean that facetiously—could tell what you would have done with that corn in the circumstances you mentioned three months from now.

The Witness: When you consider that otherwise we would have had an 8½ cent penalty on the corn, can you conceive of anything we could have done with it?

Mr. Belnap: Eat it.

Mr. Enoch: Oh, yes; even I could conceive of things that could be done with it.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. Have the Eastern railroads benefited substantially from that, because barge grain has been able to move via rail?

Mr. Enoch: I object to that.

Mr. Belnap: Let me restate the question: have these [fol. 2428] railroads gained a substantial volume of tonnage which they would not otherwise have had, by reason of the fact that the ex-barge grain has been permitted to move via rail?

Mr. Enoch: Objected to; calling for the conclusion of the witness.

Mr. Cole: And it is already covered three or four times in the record by statistics.

Mr. Belnap: The statistics outbound?

Mr. Cole: Yes, the record is full of them.

Mr. Belnap: You mean cancellation of billing?

Mr. Cole: No.

Mr. Belnap: What exhibit is it?

Mr. Cole: One of them is exhibit 67.

Mr. Belnap: You are talking about cancellation of billing by Norris?

Mr. Cole: Exhibit 77.

Mr. Belnap: I would like to have the question answered.

Mr. Cole: We never will get through if we start going back over this record.

Mr. Belnap: You have heard the gentleman say that year to year is not representative.

Mr. Cole: I have heard him tell me that nothing is representative.

Exam. Taylor: Objection sustained.

Mr. Belnap: I must take an exception.

[fol. 2429] Exam. Taylor: Exception noted.

Mr. Belnap: I think it is important to show in this case what the effect has been as to the tonnage.

Exam. Taylor: Well, it is already in here.

Mr. Belnap: It is for a certain period only.

Exam. Taylor: Will you cover that part that is not in here; I will let that in.

Mr. Belnap: I will be glad to do that. You just heard the talk as to what is in this record, Mr. McClintock; you are familiar with it. Now, taking periods of the year other than those covered by exhibits which show cancellations insofar as the rail carriers are concerned,—these necessarily include the month of December, January, February, March, and April; and insofar as the exhibits of the two houses which gave cancellation of billing which included the last half of January, February, March, and April; will you

please tell us as to whether or not the ability of the barge grain to move by rail has added very substantial tonnage to that which the Eastern lines would otherwise carry?

Mr. Enoch: I object to that; my objection being based on statements of Mr. Belnap himself, that any portion of a year could not be considered. If we get the question correctly, he is limiting that during the period of closed navigation, when it would not be possible to move grain by lake. So that if it moves, we all know it moved out by rail. It [fol. 2430] would not help the record one iota.

Exam. Taylor: Do you have any reply to that?

Mr. Belnap: No, I have no reply.

Exam. Taylor: In other words, you agree with that?

Mr. Belnap: He has made an objection; I have asked the question; it is not debatable. I would like to have the question answered, and if it is not to be answered we will pass it up.

Exam. Taylor: I will let the witness answer.

The Witness: I am not sure that I——

By Mr. Belnap:

Q. May I restate the question so as not to make it so long: will you strike my question? I will ask the reporter to strike my question.

Exam. Taylor: All right.

By Mr. Belnap:

Q. Mr. McClintock, are there any competitive or commercial conditions, or mechandising conditions, within your knowledge, which when accompanied by the rate situation which is now in effect has the result of providing for Eastern lines out of Chicago more tonnage of grain than they would otherwise would handle, if the proposal which they now make were to become effective?

Mr. Enoch: That is changed around a good bit; and that is not the question we were arguing about before. That requires simply a conclusion of this witness; and if it is answered on the record, it would require a long-winded cross-[fol. 2431] examination; because surely I know that Mr. McClintock, salesman that he is and buyer that he is, would not be able to answer that without a lot of other information in the back of his mind. Because if he has gotten grain

from other territory on even rail billing, if he has got a stock of billing in his house on hooks, with tabs on it, he does not know whether he would be using that tabbed billing or water billing. That is not subject to an answer; and I will submit to Mr. McClintock that it is not, unless there is a lot of other information available to Mr. McClintock. And we would have to develop what that background is.

Mr. Belnap: Everybody is anxious to get through, and I hope this threat of a long cross-examination—these Chicago protestants have sat here for about 10 days now, and we are just going to make what case we can——

Exam. Taylor: The witness may answer if he can answer as to facts.

The Witness: I am not exactly sure that I get the question; but I think it may relate to a statement that I made yesterday, that the dealers in Buffalo ordinarily move a considerable amount of grain over to Buffalo just next preceding the close of navigation, and move it out of Chicago or Milwaukee or Duluth. Now, that grain, of course, is over there in the hands of another market. It is over there available for merchandising out of that market on rates as are provided for ex-lake corn. I mentioned too [fol. 2432] that we had at times put some corn over there to merchandise during the winter months. But under no consideration would we feel justified in moving a volume of grain over to Buffalo to represented a five months operation. In other words, we would not want to move our business over to Buffalo at the end of November and stay over there to do our merchandising and still have our operating expense going on at Chicago.

In addition to that situation, the people whom we store this grain with at Buffalo over there do not do it for nothing. We are involved in paying the Buffalo elevators a toll in the way of storage rates not elevation charges, because in most instances they are included in the rate; but storage charges; and at the same time have our normal overhead over here. So the Chicago merchant wants to stay in business at Chicago, and he must then during the winter months depend on rail shipments out of here to handle his business over and above that which he must see fit to move over to the lakes. To that extent the business would then go to the Eastern railroads out of Chicago, serving whatever territory that can be reached during the winter months.

And it is during that period naturally, that our business is mainly dependent on the rail movement out of Chicago.

By Mr. Belnap:

Q. Now, is that same situation you just described true as between Chicago and grain in store at Georgian Bay [fol. 2433] elevators?

A. That is true; as far as New England consuming territory, the Chicago elevator man is——

Exam. Taylor: I think the answer is yes.

The Witness: The answer is yes, surely; the situation is the same.

By Mr. Belnap:

Q. Now, if the barge grain could not take the proportional rates to Eastern Trunk Line and New England territory, would every pound of that grain, other than what might be consumed here, necessarily move out of Chicago over the lakes?

A. I cannot conceive of it moving in any other direction; as the mere suspension or denying the reshipping rate as now in effect automatically places a penalty of 8½ cents a hundred against that grain, there is no conceivable manner in which the grain could be moved into consuming territory other than across lake.

Q. Does this case in reality involve any proposal as a rate to be applied on barge grain, from a practical standpoint?

A. Well, I don't understand that the case involves any change in a rate level; it is just taking—it is proposed to take out the rate that we have, and leave the freight what the man down in the country had; it gives a terminal elevator man a country rate.

Q. But so far as barge grain coming to Chicago is con- [fol. 2434] cerned, for all practical purposes, there wouldn't be any rate in the tariff in the future, is that correct, Mr. McClintock?

A. That is correct.

Q. No rail rate at all?

A. None at all.

Q. Now, it has been suggested that the present adjustment is harmful or disadvantageous to a producer over in Ohio, and the territory intermediate between Ohio and

Chicago; some rail exhibits, for instance, showing that the Ohio producer had a rate to New York of 26 cents, speaking about domestic business, whereas the barge grain would get out of Chicago for 26 cents; do you remember that testimony?

A. Yes, I do.

Q. Well, now, will you deal with that situation?

Mr. Cole: May I ask whether now Mr. McClintock is leaving the general aspects of the case, from a sales standpoint; and whether Mr. Belnap is now tendering Mr. McClintock as a rate expert?

Mr. Belnap: He is going to deal from a commercial standpoint only. Any statement of opinion Mr. McClintock expresses, he is open to cross-examination on them all.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. I just called your attention, Mr. McClintock, to the testimony that the Ohio man who takes a 26-cent rate to New York is in some respects disadvantaged by the fact [fol. 2535] that barge grain in store at Chicago can move to New York for 26 cents; and I would like to have you deal with price and merchandising situation as to Ohio grain versus Illinois grain in shipping to consuming territory in the East.

The Witness: Well, in the first place, the Ohio man compared to the Illinois producer is favored to the extent that his level of rates into the consuming territory is lower to the extent of whatever the Illinois man pays to Chicago. In other words, the common rate structure in Ohio is set up on the basis, as I understand it,—and that has met the situation in the merchandising operations—is set up on a 26-cent level.

Q. What do you mean by that?

A. I mean that he sells his grain on a 26-cent cost into Trunk Line territory, based on New York rate. That is the same as the Chicago grain merchant now sells his grain. So I say that the Illinois man is disadvantaged as compared to the Ohio man to the extent of the amount that the Illinois man pays to get his grain to Chicago; because the Illinois man does not strike the Ohio man's level until he has reached Chicago.

Q. Price level, you are talking about?

A. I am talking about price level based on transportation cost.

Q. To the east?

A. To New York; I used 26 cents.

[fol. 2436] Mr. Day: When you say price level, you mean grain price level, and not rate price level?

The Witness: I mean grain prices which are based on transportation costs. If I want to sell grain to New York, I have to first find out what it costs me to get grain to New York; and my price delivered New York is predicated on that cost.

By Exam. Taylor:

Q. At least, that is one of the elements; whether it is controlling element is a question of doubt.

A. I would say it is the primary element.

Mr. Day: The Ohio man also bases his cost on what it costs him to get from Ohio to New York.

The Witness: That is exactly what I said.

Mr. Day: That is what I thought you said; but Mr. Belnap asked a question there that sort of put a different light on it, as I see it.

Mr. Belnap: I tried not to; I tried to get that before the Examiner——

Exam. Taylor: Proceed.

The Witness (Continuing): It was my conception from the testimony given and the inferences made at least in the testimony and the exhibits, that the Ohio man or the Indiana man was disadvantaged due to the fact that the Illinois man down along the river here had a cheap rate into Chicago.

Exam. Taylor: Proceed.

[fol. 2437] The Witness: But I stated yesterday that cheap rates into a contract market, into Chicago, that the revenue, that the saving, whatever it might have been, accrues to the producing section. But it does not change the basis on which a Chicago merchant sells his grain to Trunk Line territory, because he is using exactly the same factor to determine his cost out of Chicago as he would have at this higher rate in here via rail on the Illinois proportional basis.

By Mr. Belnap:

Q. Is that also true if you are going to compare Chicago with points in Indiana where the rates grade up higher than 26?

A. That is true.

Q. And even Champaign County, where they get up to 38½ cents?

A. That is true in any territory where a competitive situation is based on a movement out of Chicago. The rate into Chicago is of no influence in creating an advantage or a disadvantage against the eastern locations, because the price delivered into that competing territory in the East is based on exactly the same factors as though that grain had moved in here via rail, the exception being that in the case of Central Freight Association territory the barge grain takes a higher rate than had it moved in here by rail; so he is less competitive in that condition.

Q. By higher rate, you are taking the level of the Northwest versus the reshipping rate?

[fol. 2438] A. That is correct.

Q. Of which examples are in the record?

A. That is right.

Q. Mr. Schimmel mentioned the fact that considerable buying of grain which moved in on lake local billing was subsequently reshipped on the basis of transit under through rates lower than the combination of factors to and from Chicago, and gave Battle Creek and some points as the outstanding illustration; can you deal with that matter from the standpoint of the merchandising of grain?

A. Well, Battle Creek differs—the operation in Battle Creek differs somewhat from other industries in that they have—the nature of their business involves a large cancellation against the tonnage; that is, they do not employ transit beyond Battle Creek on around 40 per cent of their tonnage. So the cost into Battle Creek is important to the buyer in that location. We make our sales to Battle Creek on a delivered price, on a delivered Battle Creek price. We make that price delivered up there based on the best tonnage that we have to reach that location. Naturally, we try to keep billing that will go up there as cheaply as possible. The best billing is billing that originates down in central Illinois and pays 12 cents in here, which would go to Battle

Creek for 7. But Chicago does not get a great deal of that corn any more. So we have had to use then, billing, this [fol. 2439] lake local billing where through rates are named from point of origin to Battle Creek. An example of 19 cents was used, which would mean if we acquired lake local billing from a country station down here that paid, we will say 8 cents in on the lake, it would mean it would go to Battle Creek for 11 on a transit basis. It would matter little to us, as we were making a delivered price, whether we paid the inbound line up to the Illinois proportional basis of 4 cents, permitting us to go out at 7. In the final analysis, we are absorbing in railroad charges about 9 cents a hundred.

Q. 11 cents, wasn't it?

A. That is correct; 11 cents a hundred. But that is named in the price. That is, our price to the buyer is based on what it costs for us to get to Battle Creek. And those are the instances which we have used. I don't know of any instance where we have used the reshipping rate, which is 15 cents to Battle Creek. We always find, to be competitive, that we have to seek billing that will go to that destination that is lower than the reshipping rate.

Q. So to that destination, and others similarly situated, the lake local tonnage from a merchandising standpoint is better tonnage than ex-barge tonnage?

A. Oh, yes; ex-barge tonnage is no good to those territories. There is any amount of billing that is better to go up there than ex-barge. Most any of these local points are better.

[fol. 2440] Q. I think Mr. Brennan suggested that the movement of corn in here from the Illinois River valley had the effect of displacing corn which might move in here from other territories; and if I recall, he mentioned Iowa points far distant from Illinois; what have you to say to that?

Exam. Taylor: From what standpoint?

Mr. Belnap: Any standpoint. Mr. Brennan made the statement that was the fact.

Exam. Taylor: From a merchandising standpoint?

The Witness: Oh, yes; from a merchandising standpoint. I understood he complained about it; I did not get Mr. Brennan's——

Mr. Belnap: And I don't think he was asked why; he said he thought that was the fact.

The Witness: I don't know if there are any facts that you could nail down to a situation of that kind. I thoroughly disagree with Mr. Brennan's statement. The Chicago market, to the best of my knowledge, has never said it was not capable of handling all of the business that could come through it; and I don't think that the Chicago market, or any of the mechanics of the market, are of such miniature proportions that we have to limit the territory from which we have to draw grain.

By Mr. Belnap:

Q. To be specific, Mr. McClintock, when Mechling Barge Line brings you in a bargeload of corn which is barged up, it is your own corn that you have unloaded in the elevator, does that stop you from buying grain from any place it [fol. 2441] might be offered?

A. It does not.

Q. That is, to arrive in Chicago?

A. No, sir.

Mr. Enoch: Is that as simple as that, now? Is that where you are going to leave it now?

The Witness: Well, we have not found it necessary.

Mr. Belnap: Mr. Brennan left it very simply, Mr. Enoch.

Mr. Enoch: No, he made the statement that this grain coming in here had fulfilled the demand and supplied grain that would have otherwise come from some other territory.

Mr. Belnap: That is very simply stated, and I didn't hear anybody curious about it.

Mr. Enoch: That is very simple, but you are leaving the idea here that this situation does not affect the price.

Mr. Belnap: If you think it does, you can inquire on cross-examination.

Mr. Enoch: If we go into everything that you brought out on cross-examination, we won't finish today.

Mr. Belnap: I am content to sit with you, sir. I would like to take a five-minute recess; maybe we can eliminate some of these questions.

Exam. Taylor: Five minutes recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. [fol. 2442] Proceed, Mr. Belnap.

By Mr. Belnap:

Q. Mr. McClintock, how would you as representative of the Chicago protestants be hurt if these proposals were made effective, in the light you are a merchandiser of grain here in Chicago and have the same opportunity that anybody would have to do your business on an ex-rail or ex-lake basis?

A. Well, we would all be in a similar position. We could confine our business to strictly rail origins; but that would restrict our operations to the degree of the possibility of enlarging our volume into Chicago by means of the barge movement which, as shown on the record, is of a substantial proportion. During the open season of navigation, of course, we could and would undoubtedly continue to bring barge grain into Chicago and dispose of it across the lakes. During the winter months we would be handicapped in a very decided degree, as I have already testified to here. Our next objective perhaps would be in an effort to dispose of our river business during the winter months, in a southbound direction, which of course would have the effect of diverting the grain entirely away from the Chicago market. For example, today corn accumulated on the river has approximately the same value for movement to New Orleans and thence for export as the movement through Chicago has. In other words, the present 16-cent rate to Buffalo——

[fol. 2443] Q. To where?

A. The present 16 cent rate to Baltimore enables us now to bring that grain into Chicago and use our Chicago facilities, and employ the transportation of the Eastern lines; whereas, it appears to me that our next out on that grain would be the movement of it down the river to lower ports, and in case of export to New Orleans.

Q. There are barge lines operating the year around south to New Orleans?

A. The federal barge line, which is the largest on the inland streams; they suspend their operations along about the time that navigation closes here, but they do renew their activities in the spring some two months ahead of the opening of navigation here. And there are other lines that attempt to give service the year round to the lower ports.

Q. One of them is the John I Hay Company?

A. Well, Hay operates south.

Q. Who else?

A. The largest operator, I think, other than the Federal Barge Line, is the Central Barge Line.

Mr. Day: Do you mean operating from Chicago south?

The Witness: Yes.

Mr. Day: You don't mean operating on the Mississippi River?

The Witness: Well, of course, it depends on conditions [fol. 2444] over there. If it is open,—if ice conditions does not prevent them, I am certain that Central Barge Line would carry on the year-round service, even on the Mississippi; I know that is their program.

By Mr. Belnap:

Q. They certainly do south of the mouth of the Illinois River, do they?

A. Yes, they do.

Q. And from Illinois River landings?

A. Yes, they do; even out of Chicago.

Q. When you mentioned a 16-cent rate out of Chicago you were talking about the export proportional rate to Baltimore?

A. That is correct.

Q. To attract that grain in from Morris or LaSalle to Chicago for that movement, is it necessary to have something lower than the Illinois proportional basis to get the grain in here as against the pull of the grain from Morris or LaSalle to New Orleans for export?

A. I am not sure that I understand your question.

Q. Well, the pull either toward Chicago or to New Orleans is applied at the country point, the river landing, is it not?

A. I would say that the rail rate into Chicago plus the rail rate out of Chicago to tidewater would divert a very large per cent of that grain down the river.

Q. Precisely; and it is the fact that you have a river rate into Chicago that is lower than that Illinois proportional [fol. 2445] basis, the river rate still applying in connection with the export proportional beyond is the factor which pulls that grain through the Chicago market?

A. It is a factor.

Q. Now, would the cancellation of rates on barge grain also affect your operations; that is, Continental Grain

Company's operations insofar as it is a transporter of its own grain on the river; would you be handicapped there?

A. So far as what, transporting grain? We don't transport grain.

Q. Well, have it transported; so far as you are securing the transportation and are actually the consignor of grain on the river?

A. I do not get the question.

Q. I had originally asked you, Mr. McClintock, as to why you would be in a position if this was canceled just to go out and do a lot of rail business; now you pointed out one circumstance to me where you would be disadvantaged by being so restricted. I am directing your attention to the fact that you have facilities of your own on the river;——

Exam. Taylor: Let us see if I can clear it up; do you mean that if the suspended schedules are found justified that Mr. McClintock's firm could ship direct from his river elevator to New Orleans without coming through Chicago at all?

Mr. Belnap: No; from LaSalle and Havana and Pekin, [fol. 2446] or wherever they have river elevators, they are securing the transportation of that grain presently into Chicago via barge now, that being available to go east on the basis of reshipping rates. That is the present situation. I am asking him if he won't be disadvantaged as to that end of the movement if the proposed schedules are made effective.

The Witness: Well, we would be handicapped to the point that we would have to seek an outlet for that river grain through a gateway other than Chicago. And it would be through the lower ports; and in case of export, through New Orleans.

By Mr. Belnap:

Q. If that gateway were not available to you because of a price situation, or anything else, would you not suffer in your competition with ex-rail and ex-lake grain, when you brought your own river grain into Chicago?

Mr. Cole: I object to that. He says now if New Orleans would not be open, would he be subject to certain other disadvantages; and he added in there because of price

situations, or anything else. Surely, that is way beyond the confines of this investigation.

Mr. Belnap: Mr. Examiner, may I make that plain; he can have that New Orleans situation open to him only when there is an export demand. Now, we are not always on an export basis from central Illinois; that is correct, is it not, Mr. McClintock?

The Witness: That is true. In other words, we would [fol. 2447] be disadvantaged to the point where we would not want to store grain in New Orleans in anticipation of business that might arise 90 days from now. Because in the event that anticipation was not realized, you would have your grain very much out of position; whereas under the present situation we can keep our grain close to home, where we have all of the escapes that is afforded in the general rate structure out of Chicago, and we are still in position to employ any domestic markets.

By Mr. Belnap:

Q. Are there times, many times when the export price, whether it be at the Eastern Seaboard or at New Orleans, is not high enough to attract grain from central Illinois?

A. Certainly.

Q. In that situation you are restricted to domestic markets, are you not?

A. That is correct.

Q. You are in the business of buying grain from country elevators in LaSalle in order to put into an elevator whose only outlet is to go south by river?

A. That is correct, at LaSalle.

Q. And you as the Continental Grain Company secured transportation of that grain some place by barge?

A. That is correct.

Q. If there were no export demand which would pull that grain to any port, you would have to bring it into Chicago?

[fol. 2448] A. That is correct.

Q. When you get that grain into Chicago, is it not in competition with ex-rail and ex-lake grain in the hands of other merchandisers?

A. Certainly; that is the case.

Q. And would you not be handicapped and disadvantaged in the merchandising of that grain if there were no rates provided by the railroads by which you could get out?

Mr. Day: Object to the question. I think Mr. Belnap has done altogether too much leading. I have refrained from making objections, in the interest of saving time.

Mr. Belnap: It has been suggested to me I ask questions which could be answered yes or no; and I am trying to do it.

Mr. Day: Who asked that?

Mr. Belnap: Mr. Cole.

Exam. Taylor: Of course, leading questions are objectionable, and I would have to sustain an objection.

By Mr. Belnap:

Q. In view of the objection, Mr. McClintock, I will restate the question: in the event you had grain brought in for you for your LaSalle house in your elevator at Chicago, and in the event rail carriers leading out of Chicago to the domestic markets, provided no basis of rates on that grain lower than the flat or local rates from Chicago, would or would you not be handicapped and disadvantaged in selling that grain in competition with grain owned by other [fol. 2449] merchandisers, which had been received at Chicago either ex-rail or ex-lake?

Mr. Day: That is the same question. I object to it for the further reason that it calls for a conclusion.

Exam. Taylor: Objection sustained.

Mr. Belnap: On the ground that it calls for a conclusion, Mr. Examiner?

Exam. Taylor: Yes.

By Mr. Belnap:

Q. Mr. McClintock, keeping in mind the premises which I gave you in my previous question, would the Continental Grain Company be able to sell some ex barge grain in the domestic markets in competition with ex-rail or ex-lake grain, if insofar as the territory which you had to use rail service to reach is concerned?

A. We could not compete with such a situation; and to that extent our investment in the river houses would be affected. Instead of providing a year-round operation, we would be handicapped to an operation of some seven or eight months during the open season of navigation, where we could employ the only escape we would then have with that origin.

Q. And then during the open season of navigation would you not be able to compete with a destination which required a rail movement to reach it?

A. Absolutely.

Mr. Belnap: That is all.

By Mr. Macaulay:

Q. Mr. McClintock, I have been told that Chicago is the [fol. 2450] largest grain market in the world; do you know whether that is a fact?

A. Well, being a member of the Board of Trade, I will say yes.

Q. Well, would you say it if you were not a member?

A. Yes, I think Chicago has the reputation of being, and is the largest corn market in the United States.

Q. Do you know whether or not there is a different local rate out of Morris on corn than there is on other grains?

Exam. Taylor: He is not a rate witness.

Mr. Macaulay: Well, he buys these other grains, and he knows what the application of the lake locals is. Let me ask you, do you know whether the lake locals is confined to corn?

The Witness: That is my understanding.

By Mr. Macaulay:

Q. You stated that there would be no rail rate at all for barge grain out of Chicago; isn't it a fact that there would still be the local rail rate of 34½ cents per bushel on barge grain?

A. Which is a country rate; it is not based on any inbound factors, movement of grain into the market and thence beyond.

Q. That would be the only rate that would be available for barge grain arriving at Chicago?

A. That is true, by rail.

Q. Do you know whether or not there are any local rates on grain from Toledo and Buffalo to New York and Baltimore which are higher than the rates——

[fol. 2451] Exam. Taylor: He is not a rate witness; make your question as to merchandising, and not as to rates.

By Mr. Macaulay:

Q. Well, as a merchandising expert, can't you answer that if you know?

Exam. Taylor: If you will frame your question so it will cover merchandising.

By Mr. Macaulay:

Q. In your experience as a merchandiser of grain, do you know whether or not there are any local rates on grain from Toledo and from Buffalo to New York and Baltimore which are higher than the rates on traffic reaching Toledo and Buffalo via lake and then going via rail to New York and Baltimore?

Mr. Cole: I object, Mr. Examiner. That is again the same statement. It is simply asking for rates.

Exam. Taylor: Objection sustained.

By Mr. Macaulay:

Q. Do you know of any grain that has been reshipped from Chicago on the local rates out of Chicago, either to Central Freight Association territory or Trunk Line territory?

A. I do not.

Mr. Macaulay: That is all.

Exam. Taylor: Cross-examine, Mr. Cole.

Cross-examination.

By Mr. Cole:

Q. Mr. McClintock, I understood you on direct to say that as soon as you buy grain you hedge it; you hedge all of [fol. 2452] your grain, do you not, that you buy?

A. Yes.

Q. When you buy grain on that 57-cent price you use it as an example now, you will bid 56½ cents in Chicago for it; and if you buy it here in Chicago your firm may make the commission on that purchase; that is correct, isn't it? You buy it then at 56 cents?

A. If we buy it direct from the original seller in the country.

Q. Now, you are a member of the Chicago Board of Trade; when you hedge that grain as soon as you buy it, what is the operation of that hedge,—what would you then agree to sell it for on a hedge?

A. Using 57 cents as the base?

Q. Yes, using 57 cents *cents* as the base?

A. Well, I hedge that grain for two purposes: I want to do one of two things, as I stated on direct examination; there is two things an elevator man wants to do, he wants to merchandise out of his markets, and he wants to be in position to deliver grain if that appears to be the best thing to do from his standpoint. In the case that you mentioned I sell a future at 57, which means that I sell to some buyer that grain at 57 cents in store — our elevator. Do you want me to go through the mechanics just a little further? That is what I receive for that grain in store, located in our elevator. Whenever the buyer takes that grain, if I elect [fol. 2453] to deliver it on that future contract that I made, the buyer that accepts that, he accepts it at 57 cents in store; and then he must pay the elevator operator 1¼ cents elevation charge. We perform the service of loading it out, and for that the elevator receives 1¼ cents a bushel.

By Exam. Taylor:

Q. That is 2½ cents total?

A. Well, of course, 2½ cents,—how did you arrive at that?

Q. I thought you said 1¼ for elevation and 1¼ for the outbound handling.

A. No, that is the outbound handling, 1¼ cents.

By Mr. Macaulay:

Q. Does the man who bought that hedge from you pay you for the storage of that grain during the time after he buys the hedge until delivery is taken?

A. He does not pay storage on it unfil the time he accepts delivery.

Q. And then does he pay storage at the time it is delivered?

A. And the cent and a quarter elevation that he is required to pay entitles him to 10 days free time. That means that he could leave that grain in the elevator 10 days after he received delivery until storage starts.

Q. Mr. McClintock, if you sold a futures contract today for May delivery, and you sold it today at 57 cents, and the corn, say, or the grain was in your public warehouse now that you sold the future on, who would absorb the expense of keeping that grain in your public warehouse to this time [fol. 2454] when you sold a futures contract from your May delivery?

A. I would, in case I was the seller, I would. In case the Continental Grain Company who bought the transaction, they would have to absorb whatever cost there was for carrying that grain up to the time he could make delivery, which would be May.

Q. If you sold a futures contract on grain that you had in somebody else's warhouse, who would pay the storage charges from the time that futures contract sale was made and delivery?

A. What is that, now?

Exam. Taylor: Read the question.

(Question read.)

The Witness: If I owned the grain in some one else's house, and I sold a future against that, say a May future, and made tender of delivery during the month of May, I in that case as the seller would have to pay the storage as long as the title to that grain remained in my name.

By Mr. Macaulay:

Q. If you actually sell the physical grain before the future comes around for delivery, when you sell that grain, do you take into consideration what that grain has cost you, or do you take in consideration the then value of the May future?

A. Well, using that same basis from the standpoint that we hedge grain, we use the future at 57 cents.

[fol. 2455] Q. Yes?

A. And the theory was that we bought the grain at a half under the May future, which was 57 cents. Then, we would have to sell in order to make money when we wanted to make a cent a bushel on that grain,——

Q. Yes, sir.

A. Then in that case I would price my grain at a half cent over the December future.

Q. Wait a minute; half a cent over May future?

A. May future, yes. I would sell that grain at a half cent over May future,—Now, does the fluctuation of the market disturb you there, as to how I might attract half a cent a bushel?

Q. No, I am coming to that, Mr. McClintock; and I know that fluctuation of the market does not disturb you, and that is what I am trying to get on the record.

A. In other words, if the future remained stationary at 57 cents, and I could buy corn at one-half cent under, and sell at one-half cent over, I would make that cent; that is the economics.

Q. Now, suppose you bought this grain and hedged it; and you sold this at 57 cents for delivery in May; and suppose that after you made the purchase and made the hedge sale the futures market goes to 60 cents between that day of purchase and the sale of the hedge and the date of de- [fol. 2456] livery coming along, what do you do then?

A. Theoretically there, in your example, I have a three-cent loss in my hedge; is that correct?

Q. Yes.

A. But the value of corn has followed the value of that future, so corn is still that relative to that future the same price it was when I bought it.

Q. Yes?

A. So I would absorb a 3-cent loss—say I was breaking even on it; for example, I would absorb a 3-cent loss on the hedge, but the value of my corn has increased 3 cents; so I have a 3-cent loss on the one hand, and a 3-cent profit on the other, and break even.

Q. After you have purchased your grain on the basis we have explained, and sold your futures on the basis that we have been through, could you not at all times break even, at least that situation that you have just referred to, if you simply sat still and delivered the goods at the time the futures contract was due to be fulfilled?

A. If that theoretical example that we used worked out in practice, we could, yes.

Q. Then, Mr. McClintock, when you actually sell the physical grain and buy back your futures contract so that you do not have to deliver at the end of the future call, don't you always insist on getting some premium over the future [fol. 2457] basis that is being quoted?

A. We strive for that, but it takes two to make a trade.

Q. Yes.

A. And I would not say we would be successful about it. I would not say that that would be our objective, either; because the condition here from an elevator standpoint, I might be and it is likely that I would be more willing to deliver corn than I would to sell corn, if the same price was involved.

Q. Yes?

A. If the same results were involved.

Q. Yes?

A. Because frequently the public elevator man in that transaction, he at least has the opportunity of securing some storage on the corn.

Q. Yes?

A. So I would not under normal conditions be particularly anxious to dispose of the physical corn merely because I could get equal to the delivery price.

Q. Now, when it comes to your attention, and you are placed in the position of considering a sale, do you in any respect after you have bought the grain and made your hedge, go back and consider before you make a sale what you paid for the grain; or do you rather consider the relationship of price that you can secure with the then quoted market of your hedge?

A. Mr. Cole, there are always circumstances that help [fol. 2458] you make up your mind what you want to do about the particular transaction when you are deciding what could be done. Now, I would not say that the terminal elevator operator as a practice refuses to sell grain, because he has not accomplished his intended purpose and made a profit on the grain. And I will give you an example, why he might be justified in selling his grain, for example, without a profit or maybe a small loss;——

Q. Pardon me; I don't mean to interrupt you, and you can explain; but my point is just the one little thing, and that is all right now that I am interested in; and maybe we can shorten it: in other words, when you are considering the sale and I am coming to you and want to buy corn from you, all I want to know now is, do you go back to your books and see what you paid for that corn; or do you sit and figure —this is the first thing—just consider this point alone:—I don't know whether this is the first thing you consider, but do you figure my willingness to pay you the rates you paid for that future contract at the time you bought the corn?

A. You mean my price to you, would it be predicated on what that corn cost me in dollars and cents at the time I bought it?

Q. Yes.

A. Or would my price be based on the relative relation to the future?

Q. That is it exactly.

[fol. 2459] A. It would be the relative relation to the future at the time you wanted to buy it. It might be 10 cents away from the level at the time this transaction was originally made.

Q. Now, another question: suppose that that futures market at the time I came in to buy corn from you is 10 cents away from the level at the time you bought the physical corn, whether that level be up or whether that level be down, it would not affect you in your ability to talk to me about sale of the corn at that time with relation to that future, would it; because if you took a loss on your future contract you would make a corresponding profit on the physical delivery of the corn, and vice versa; isn't that so?

A. That is true; and that is why we are interested in having billing that we can make delivery on future contracts.

Q. Have you at any time experienced a situation in the Chicago market where hedging could not be done? You are always able to hedge, aren't you,—and you always do?

A. There have — one or two exceptions in my recollection, where you could not execute——

Exam. Taylor: A little louder, Mr. McClintock.

The Witness: I say there has been a time or two in my recollection that you could not effect future transactions in the market. Could I explain that?

By Mr. Cole:

Q. Go ahead; is it unusual?

A. For example,—it is unusual, most unusual, and as I [fol. 2460] say, has only occurred a very few times, to the best of my knowledge.

Q. Yes.

A. For example, we have in effect limits which the market can fluctuate. When we first got into the war in September, I believe it was; and, of course, it was what we term a bullish influence on the market, and I believe the limit in fluctuation at that time was set at 5 cents on wheat. Well,

of course, the market when it opened went up at that point and it was 5 cents over the previous call bid all day, and no sellers. So in that case you could not execute a contract. There have been a few instances like that. But as a very general case, the Chicago futures market is able to absorb almost unlimited transactions.

Q. Is there a like maximum variation in the market on corn also, that would work the same way?

A. Yes, there is.

Q. What is that maximum variation limit on corn?

A. I believe it is 4 cents; I am not sure about that.

Q. At one point in your direct——

A. I want it understood that I am not certain what that is right now.

Q. All right; you said at one point in your direct that in 1939 the amount of grain shipped out via rail carried in it some balances of corn inbound to Chicago which had come in on the laks locals during the preceding year, and which [fol. 2461] still enjoyed the right to move out before that local rate was restricted as to transit; do you remember that?

A. If I said that we used lake local billing out that had accumulated the preceding year, I did not say what I intended to. I don't think I said that. I said that there was on hand in 1939 billing that the elevators had accumulated during the year of 1938 and the early part of 1939. That was not lake local billing, but was Illinois proportional billing; as there were no local rates in effect at that time.

Q. The impression I got,—I may have been mistaken about that—you said that their billing had been accumulated before the lake locals had been in effect?

A. Yes, I did.

Q. Do you recall that the lake locals, some went in in 1933 and 1934?

A. I remember there were some lake locals in effect for portions of the year.

Q. When any of those lake locals were effective, did they not also provide that transit was not to be permitted?

A. Yes, they did. It was my understanding that those rates in those cases were in effect only during the open season of navigation here, or during the spring and summer months.

Q. When you buy tonnage of grain, and when you pay in the price for that any premium as a value not in the grain

but in the billing, don't you keep that billing separate and [fol. 2462] use that billing for outbound movement of grain where you get the benefit of that premium at least?

A. I would say as a practice, Mr. Cole, that we would not pay a premium for billing unless we knew what we were going to do with it. For example, I might know that a certain territory in the Mississippi Valley can be reached from Chicago if certain billing is avalable here; and if that billing is available I will pay a premium for it up to the extent that it will allow me to participate in the destination that I want to go to. But as a practice, just merely accumulating a stock of grain, we would not pay a premium for corn. There is occasions that after we have accumulated this stock of corn that these same conditions arise, and we might have acquired that billing without paying a premium for it.

Q. In your normal operations, and I am asking you this now inasmuch as you can tell whom of this group that you represent,—you represent here a group that handles approximately 83 per cent of the business in and out of Chicago; in that 83 per cent there is grain coming in here rail and ex-water; in your accumulation periods, is it not true that you accumulate through your purchase operations, this group grain with every sort of billing behind it that it is usual to receive in this market?

A. I would say that we do in our transactions get all kinds of billing; yes. But it is the practice to limit our [fol. 2463] purchases of in billing that has the least possibilities in it, or that you are required, that you can only do one of several things that you might be able to do with other billing. For example, we have corn coming in here off of lines out of Indiana that is restricted to an outbound movement on that particular line. In other words, we have to originate business on their line,—we have to originate business beyond in order to dispose of that billing. Now, that is not good billing to have.

Q. But in the course of your ordinary accumulations of grain during the period that you are accumulating it, you do customarily, year in and year out, purchase grain from any origin that you may get it and put it in a house; so that after you bought your grain in your accumulation you will have in the house billing of almost every description that does come into the Chicago market; is that not a fact?

A. That, as I said, we would probably get some of every

kind of billing; but we are very careful about the percentage of certain classes of billing.

Q. That is understood; but what I was getting at is after you have filled up your stock in your warehoues it is quite customary, and happens year in and year out, after you will have acquired that accumulation you will also have acquired bills from every possible source, and subject to every possible impediment that pertains to the Chicago market; [fol. 2464] is that not correct?

A. With the reservation that I just stated.

Q. Well, you will even have some of that?

A. I said there was a possibility we would have some of it. But we restrict our buying; we do not want to accumulate billing that we can only do one thing with it.

Q. That is correct; you don't want to accumulate it; during the course of your accumulations you will have accumulated it through the year?

A. I would say that we do; whether it is one car,——

Q. That is right.

A. One car would be some, and that might be the amount that we had.

Q. Now, when all of that grain was purchased during your accumulation period, no matter where it came from, and no matter what sort of transportation it used to get here, you paid for that grain the Chicago delivered price on the day that you made your purchase, as we have described before, did you not?

A. We paid the Chicago price for the value of that particular grain, whatever it might have been; I would not say we paid the same price for all of it.

Q. Oh, no; if you bought it over a period of time that value would fluctuate?

A. I mean even the same basis. I will give you a little example:

Q. All right.

[fol. 2465] A. It is this Indiana billing, for example, that I told you that it comes in here with quite a high differential between the local and the proportional rate; and it runs up four or five or six cents tied up in the billing, that we invested in that billing.

Q. What point in Indiana, now,—can you give us an origin?

A. Well, it is quite a general territory in western Indiana. And as I say, during the wheat movement we don't

know exactly what we will be able to do with that. We have got a tieup here that we cannot get that money back by loading it out on a boat, except in some examples that were referred to in the testimony here and explained. So we have got that tieup billing, and we know that we have got to go back to an eastern destination by rail to recover this tieup, as we call it. And the reason that it is a tieup, the basic value of that corn is based on the lower rate, the Illinois proportional rate, whereas the freight is based on the local rates; so we have a tieup in that billing until such time as we can make shipment to the proper destinations that the tariff provides that we have to go to to recover that. So we don't like to do that. And usually there is a sort of a commercial agreement made between all interested parties, the elevators, and the receivers; and the elevator takes on part of the hazard that is involved in a situation like that by buying that grain at some discount. And the shipper is allowed to get the benefits of his cheap [fol. 2466] Illinois proportional rate to whatever extent the compromise amounts to.

Q. Now, grain that you do bring in here and place in your elevator, and register the billing with the transit bureau, how long a time do you have within which to use that transit billing and cancel it?

A. Well, rail billing—I don't care about answering that question; I can only give you just my understanding of it.

Q. That is all I want.

A. I believe that rail billing is considered live for transit for a year, and that you have a year's extension privilege on it. I am not certain of the mechanics of it, or that I am right about the time.

Q. That time is carried in the transit tariff that we introduced in the record here, is it not?

A. I don't know.

Q. You are familiar with the fact that there is a period of at least one year within which you can use your billing?

A. That is my understanding, that there is an extension privilege.

Q. And that there is an extension privilege beyond that one year time?

A. I suppose that there are certain circumstances that permit that, I am not sure.

Q. Now, if grain came in to your elevators close to the [fol. 2467] end of navigation that year, and after navigation that year, it would be possible, would it not, to take that grain and allow it to constitute a part of your stock on hand, take that billing, keep it in your office until the next spring, and use that billing for lake shipment out when navigation opened up the following year; that is physically possible, isn't it?

A. Are you referring to any particular kind of billing?

Q. I am talking about billing that you get, say on the lake locals, that could not go out by the use of the rail proportionals, that you had to ship it out over the lake?

A. That could be done. As a matter of fact, I don't think there would be any loss incurred if you confined your shipment out by lake, if you shipped it out five years after, and your billing died, if you were just confining your operations to a lake movement.

Q. So that that escape is possible when navigation reopens?

A. Yes.

Q. Now, operators as large as the group you represent, operating about 83 per cent of the volume in and out of the Chicago market, is it often that those men during their accumulation period have failed to accumulate sufficient billing of rail permission out so that at the close of navigation when they buy this other lake local stuff that has to wait until spring they do not also have on hand stocks which can move out, and billing which can move out via rail?

[fol. 2468] A. That would be the desirable situation, Mr. Cole, to adjust your business to that basis. But the desire or wish to do that does not necessarily make it possible to do so. Though, as I have explained here, the trade territory from which Chicago is most likely to draw its corn is now practically all inflicted within an area here of about 375 stations. It all has an infliction on it, a penalty against it. So the mere desire to accumulate the billing that you want to do the thing with that you suggested there cannot always be accomplished; and that is the reason we are in this case today. We are trying to retain the only kind of billing that we can do those things with.

Q. Mr. McClintock, how often in your experience as a grain operator in the Chicago market, have you, since you were connected with this group, and particularly the Con-

tinental, how often have you been considering a sale which would necessitate a rail movement out of Chicago where you found it so that you did not have in your office the kind of billing which would enable you to move that grain out on the rail proportionals?

A. Many times.

Mr. Brown: A rail billing?

Mr. Cole: Yes, a rail billing in.

The Witness: We have a situation of that kind right now. We have a stock of white corn that we cannot reach the consuming trade on a basis that will permit us to move it there on account of the restrictions that are placed on the outbound billing.

[fol. 2469] By Mr. Cole:

Q. Where did that white corn come from, and what are the restrictions that there are on that?

A. The white corn territory in this state is pretty much within the area that is described in this lake local territory.

Q. And the restriction that is against that rail billing, now, what is that restriction?

A. Restriction on an outbound movement coming in here lake local; we are penalized to whatever extent the inbound lake local differs from the Illinois proportional rate.

Q. You are suffering right now because there is actually, because there has actually been rail shipments into your place, Chicago, from rail origin territory, which rail shipments cannot move east of Chicago on the rail proportionals; is that correct?

A. Correct.

Q. Whereas there is in your house ex-barge grain from a river origin which moved to Chicago via the river, which could go out in preference to that shipment of rail grain in here that is subject to that impediment; is that correct?

A. To certain destinations.

Mr. Belnap: Might I inquire, just for purposes of clarification there, is that restriction that you speak about, is the restriction in the western lines' tariff, that provides that rate is an intrastate only and cannot be used?

The Witness: That is my understanding; the penalty is [fol. 2470] assessed by the inbound carrier in the case I referred to.

By Mr. Cole:

Q. Mr. McClintock, you referred at several points in your direct to this merchandise grain, corn which moved down to the foot of the lakes; you say there are dealers down there, and warehouses down there that move their grain down during the period of open navigation, and they have quite a stock on hand at all times; isn't that correct —so far, isn't that correct, they have large stocks on hand at Buffalo?

A. To a greater extent, yes.

Q. So those are in a position to make deliveries into the eastern area of the United States, is that correct; they have got the stock over there?

A. That is correct.

Q. Now, that stock has moved over there with the view of saving the transportation cost by using a cheaper form of transportation cost, has it not?

A. From whose viewpoint; from the viewpoint of the dealer in Buffalo, that is the reason he brought it over there?

Q. Yes.

A. Well, of course, his reasons for bringing it over there is because he is in business over there, and he must get the grain over there before he can utilize the facilities that he is operating. I presume the rate situation has some bearing on it, that if the water transportation affords him a cheaper through rate to where he anticipates he will market that [fol. 2471] grain he will to that extent use the water transportation.

Q. Now, during the winter season when your lake is frozen up and you got a stock on hand at Chicago, and you get bids for the merchandise, and then the Buffalo man gets bids for the merchandise, and the Green Bay man gets bids for the merchandise, and you have all got stocks of goods on hand, the Buffalo man, the stock over there that moved water, and your stuff that is landlocked here during that time, from the basic economic viewpoint which man is going to get that trade?

A. Predicated on what, on the rate structure that we have today or the proposed rate structure that is involved in this case?

Q. Based, let us — on the proposed rate structure that we have.

A. Then we would not even consider ourselves competitive; so far as the competitive situation is concerned, it would not exist.

Q. Based on the present rate structure?

A. Based on the present rate structure, and based on the factors that made up the transportation cost as put in these exhibits; namely, a level of lake rates that were in effect during the latter part of 1939, there would not be so much difference to most destinations. In other words, supposing a Chicago dealer just absolutely wanted to keep himself competitive with the Buffalo dealer all the year around, and to do that he would have to move a stock of grain over to [fol. 2472] Buffalo preceding the close of navigation, he would have to consider this: now, I can get to these domestic markets in the east, or New England states, for about what the Buffalo dealer —, based on the cost of transportation that is set up in these exhibits.

Q. Wait, please; don't base it on the cost of transportation as set up in these exhibits; base it upon your experience and what you know lake transportation to be.

A. That is my experience.

Q. Your experience mostly is transporting it when it is two cents a bushel via the lakes, instead of when it is 6½ cents on the lakes, as is absolutely shown in some of these exhibits?

A. You are mistaken; there is no 6½ cents a bushel on the lakes,—6½ cents a hundred. Carrying that thought along, we will say that under the present rate structure the Buffalo man still has on the face of it a cent a bushel advantage of me. Now, under that condition am I as a Chicago operator justified in moving a lot of grain over to Buffalo to compete with Buffalo, as long as there is only a cent difference in the situation?

Q. Yes, sir.

A. No, we are not; we are justified in moving a little over there that we can merchandise say within 30 or 40 days of the time it arrives there; but we are not justified in putting grain over there to compete with that man all winter, because we might have to pay that same competitor storage to compete with that grain.

[fol. 2473] Q. I understand that.

A. And at the same time we would carry on our operation here; we would keep our grain here, and we can sell and still compete with the Buffalo man without paying a

toll for the transaction involved for a Chicago merchandiser.

Q. During the period of closed navigation the man who has his stock of merchandise at the foot of the lakes is in an advantageous situation, so far as your competition with him during those winter months is concerned, with your stock of merchandise in Chicago?

A. He is in competition; yes, sir.

Q. He is in an advantageous position?

A. I would say that he was in an advantageous position, based on the differential on what I can escape for in the winter months and what he can escape for based on taking his grain there in November and carrying it through the winter.

Mr. Belnap; And then going out on ex-lake rates?

The Witness: That is true I said, not because of transportation which would include ex-lake rates; but we do not foster any further advantage merely because he already has it.

By Mr. Cole:

Q. Now, suppose that this situation were brought about, Mr. McClintock: suppose that the present tariff change is made effective so that the ex-river grain does not have the availability of the proportional rates east, and suppose that these lake local rail rates into Chicago were given the priv- [fol. 2474] ilege of using those proportional rates out, or the transit rates out, so that the lake local grain, the rail grain could move through, I understand from your direct that then that lake local rail grain would not be an impediment in the market. Would that change anything here if that shift was made?

A. You mean change the—would it lessen the effects that would and will result in denying the elevators here the reshipping privilege,—would it tend to soften that condition; is that what you mean?

Q. Well, for instance, here is what I am getting at: if you could use the inbound rail tonnage, the local tonnage on transit, would there be any question in your mind that all of this ex-river grain would without any difficulty find its escape over the lake?

A. Yes, I think it would. I think it could be done. Now, based on the condition that the lake local rates as now in

effect can be made applicable on the proportional rates, the proportional and reshipping rates out of Chicago?

Q. I said that as a supposition, yes.

A. That would be a very happy situation, so far as the Chicago elevators are concerned, and we will vote for it.

Q. If that happened, and if you had without any question escape over the lake for every bit of ex-river grain that you could anticipate receiving, would there be any change in the slightest degree with reference to the Chicago [fol. 2475] prices and those secured for the ex-river grain down in the country.

Mr. Belnap: May I be sure about that question: that is on the same premise as the previous question; in other words that the present lake locals are made interstate rates?

Mr. Cole: Yes, sir.

The Witness: I am not sure that I just quite understand you.

Mr. Belnap: I would make this observation: there is no proposal to make the lake locals interstate rates; and so what would happen in that situation seems to me to be quite immaterial.

Mr. Cole: All right; I probably can put it in another way: Mr. McClintock, if you had a lake outlet assuredly for all of your ex-river grain, would there be any change in the relative price situation as between the origins in the country down along the river and the Chicago market?

Mr. Belnap: May I inquire again, are you not on the same premise?

Mr. Cole: No.

Mr. Belnap: You are on the premise that the lake locals stay as they are, with penalties against them because of the inbound?

Mr. Cole: No, sir, Mr. Belnap; I did not say that.

Mr. Belnap: Well, you had that premise in your previous [fol. 2476] question; now, do you withdraw it?

Mr. Cole: I started all over again.

Mr. Belnap: I know, but if it is just a premise that the lake local situation remain as it is today,——

Mr. Cole: No, I didn't have that anywhere in the question at all.

Exam. Taylor: Read the question.

(Question read.)

Mr. Belnap: He didn't state either one way, either one thing or another about it, Mr. Examiner; but he had previously stated to me that was the premise of a question. Now, he says, I will start all over. And I want it clear. May I go off the record a minute?

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: The witness may answer.

The Witness: Your question, your query was on the basis of would there be any change in the price?

By Mr. Cole:

Q. Relativity?

A. Relativity as to the value of barge grain and grain that arrived here on lake local?

Q. No, sir; I cut all of that lake local stuff out of my way; what I am trying to get at, Mr. McClintock is this: Continental Grain Company, Norris Grain Company, and other grain dealers have made important and substantial invest- [fol. 2477] ments in facilities along this waterway; they have been seeking the grain from that area. The grain has come into Chicago in increasing amounts. During 1939 14.85 per cent of the total receipts of corn in the Chicago market came from the Illinois waterway; and of that, I take it, 83 per cent was handled in and out or by the men and interests that you represent here. Mr. McClintock, would those men and the interests that you represent, and do you seriously anticipate any infirmity or any trouble with your ability, considering your volume, considering your interests down along the Illinois waterway, in handling every bushel of grain that you receive from the Illinois waterway origins?

A. I would say that we would be handicapped.

Q. You say that you would, or would not?

A. Would; if we are confined to strictly a lake movement out of Chicago with that grain so originated. And I think I made that plain in my direct testimony, that it would—our ability to accumulate grain would be limited and restricted for about five months out of the twelve; four or five, whatever the distance is between the close and the opening of navigation.

Q. I don't think you quite see my point yet, Mr. McClintock; I am talking to you now as the representative of the

firms who handled 83 per cent of the business in and out of Chicago. The record shows so far that the relative volume [fol. 2478] of traffic outbound from Chicago via water and rail has varied materially; and you will agree with that, won't you, Mr. McClintock?

A. That is true.

Q. Your figures were that during 1939 the shipments that were made by the firms that your interests represent, that you represent here, shipped some 44,000,000 bushels out via rail and 55,000,000 bushels out via lake; am I correct?

A. That is true.

Q. Your total receipts of grain from the Illinois waterways in the Chicago market has accounted for some 14.85 per cent of the total receipts of corn in the Chicago market; I am asking you now as a business man, if you have valuable investments down along the Illinois waterway that you own yourself, and your outfit does, and the interest that you represent, elevators down along the Illinois waterway built for the purpose of buying that corn down in that territory and moving it up here via water; can you conceive, with more than half of the business going out of Chicago today via lake, any possible serious difficulty with your ability to handle 14.85 per cent of the receipts into this area?

A. I think I can answer that: it should be recalled that this 52,000,000 that was moved out via lake was moved out during the open season of navigation, of course?

Q. Yes, sir.

A. Having these facilities on the Illinois river, and if we [fol. 2479] were to want to utilize them, which we naturally would, during the winter months, then we must use all of our space as a storage space for the purpose of taking care of our river corn that originates at these points where we have our investments. And to that extent we would not have participated to a volume of 44,000,000 bushels in 1941, if that is when the new rate would become effective, as we did in 1939 under identical conditions. In other words, our business from the river direct would be restricted to the limit of our capacity in Chicago to store that grain, so far as Chicago was concerned. Our operations on the rail movement, to that extent, would become almost entirely extinct.

Q. On ex-river traffic?

A. On any grain, if as you say—you premised your question on the basis that there was a condition in which we could escape across the lakes on a greater volume of business than is now indicated is moving into the market via water.

Q. No.

A. Yes.

Q. No.

A. You premised your question on the basis that there was an escape across the lakes for a greater amount of corn than was now coming into Chicago via river; in other words, you held that up as a basis where we would not be affected by it.

Mr. Belnap: Mr. McClintock, in your answers when you [fol. 2480] talk about being tied up, and put out of that business,—if you handled that business,—you would be completely tied during the period of closed navigation?

A. I am taking this position: that we are going to handle all of the grain that we originate across the lakes; then we have to use our terminal elevator here in Chicago to store the grain so accumulated during the winter months.

Mr. Belnap: That is right.

The Witness: And if we are going to use it only for that purpose we cannot participate in any rail business out of here, even if it was offered.

By Mr. Cole:

Q. What I was coming to is, if you ship about 52,000,000 bushels during a season via lake, and get in from all of the river origin points 10,000,000 bushels, why are you going to have to store 25,000,000 over the winter, of river corn?

A. Whatever the amount is. If we had our operations set up on a basis of doing a river business only when the lakes were open, we could accomplish the purpose that you suggest.

Q. All right, now, Mr. McClintock; when does the river grain from this origin territory begin to come upon the market; when in every year do you begin to buy up this river grain?

A. You cannot—we are affected temporarily by conditions such as we have now; but this is the first time, to my

knowledge, since the winter of 1935-1936 that there has [fol. 2481] been any restrictions on the movement of grain the year round via Illinois river to Chicago.

Q. When you consider getting in Chicago from these river origins, a volume that will run ten or eleven million bushels a year for the calendar year, how would you say that 11,000,000 bushels moved in here; would that move in approximately a million bushels a month, or would it be an even amount every month?

A. I think that could be said, that that is about the way it moved.

Q. It moved in here about one million bushels a month?

A. I think that is fair.

Q. When is the lake open?

A. It varies from April 15th to May 1.

Q. Well, to be fair about it, let us say May 1, the latest period;—when is it closed?

A. Around the first ten days of December.

Q. Assume December 1st, say; now, there is seven months then in which from—in which time 7,000,000 bushels of grain have moved in here over the waterway; and when that moved in you could ship it out via lake, couldn't you; you wouldn't have to store that in this period?

A. Not if we—we wouldn't have to, no.

Q. You could move that out over the lake; so that of an 11,000,000 bushel total amount there would be 4,000,000 [fol. 2482] bushels that would be held up because of closed navigation; is that correct?

A. Four or five million.

Q. And what is your storage capacity, of the group that you represent, that ships out some 83 per cent of the handling in Chicago on grain?

A. The estimated capacity of our elevator is four million bushels.

Q. You are talking about yours only?

A. Continental Grain Company.

Q. What is the elevator capacity of the whole group,—because this grain, I understand, is being handled by the whole group?

A. About 32,000,000. Some of that now—there is about 25 million on the water.

Q. 25,000,000 bushels could be stored, with a possibly carryover of 4,000,000 bushels? I think that is all on that.

This grain that you have purchased along the river, and that does have the ability to escape via the lake, that you purchased during the seven months period when the lake is open,—and looking at this matter now from the standpoint of that period of open lake navigation, would anything that we propose here affect in the slightest degree the price that is paid for that grain down in the country with relation to the Chicago price; when you know you have an escape via lake?

[fol. 2483] A. In the first place—yes, sir; answering your question directly right here. I am sure that you appreciate the fact that the operators of these terminal elevators here are not necessarily operating only on this 12 or 13 million bushels of lake billing corn in here. It comes in here and there are other uses we employ our elevators for, such as bean storage, and the wheat business, and the bean business, and any number of businesses that are not involved in this case, other than so far as the rate situation is concerned. I mean that we are not confronted with wheat and beans on the lake local question. So our elevator capacity is engaged in handling those commodities as well. And at the present time—now, you speak about our capacity;——

Q. Wait, Mr. McClintock. Pardon me, I don't mean to unnecessarily interrupt; but I am not asking about the different periods of the year now. I don't mean to go into that; I mean that during this period of open navigation, seven months' time, when and during which you could have either the ability to go over the lake to the east, would the price that you pay for corn down along the river during that period be just what it has been described to be in this record with relation to the Chicago price? Would you go down there when this market is 57 cents, would you go down there and bid 56½ cents; and if you bought it from a commission firm here would you pay them 56 cents, so that the man down there, you could pay him 56 cents, less [fol. 2484] cost of transportation to Chicago?

A. I think I stated in the record what would happen in that regard during the winter months was somewhat problematical. I can say however that any condition in the marketing scheme that is based on a one-factor escape for grain that you accumulated is hurt and penalized.

Q. I beg your pardon; but again you state in your answer

during the winter months; and my question has been addressed from the start to the period during open navigation.

Mr. Belnap: That is, Mr. Cole, you want the effect on the country prices during the period of open navigation of what is here proposed; is that what you are asking about?

Mr. Cole: Yes.

The Witness: During the period of open navigation, and on past experience here where there has been a movement out I can see where you would have an escape for all of our barge billing; and I would not be willing to say that the price in the country would have to be discounted under that condition. But——

By Mr. Cole:

Q. Well, now, wait:——

Mr. Belnap: Let him finish.

The Witness: —but as stated, any marketing condition based on a one possible outlet for your grain is a very hazardous situation; and the elevators would be assuming quite a hazard under that condition.

[fol. 2485] By Mr. Cole:

Q. Yes, sir; and, Mr. McClintock, you are subjected to that present hazard which you have been so worried about on every pound of corn you buy with a lake local billing behind it, are you not?

A. Yes, sir; other than facts that have been pointed out here, that there is some escape with that.

Q. That lake local billing, outside of the few points where you can use a balance of the through rate, all of that lake local billing is absolutely limited to the one outlet of the lake, is it not?

A. If you don't want to absorb a penalty.

Q. And you said that that would be impossible?

A. That is true.

Q. So that we cannot, as a practical matter, consider it?

A. As a practical matter it is an impossible rate.

Q. However, that lake local grain that you secure, and the grain that you secure along the river has this difference, does it not: when you have a facility along the river which has cost you an investment of quite a substantial

amount, and you have one outlet for grain, you are buying it through that facility—you have your own employes in the field; you are down there with a branch house; then, as a business man, wouldn't you buy enough from there, if you had to cut down some place else you would buy less of the lake local billing, would you not?

A. I think that is exactly what we would do.

[fol. 2486] Exam. Taylor: We will recess until 1:00 o'clock.

(At 11:55 o'clock a. m., a recess was taken until 1:00 o'clock p. m., January 26, 1940.)

[fol. 2487] Afternoon Session

The hearing was resumed pursuant to recess.

1:00 P. M.

Exam. Taylor: All right, gentlemen. Are you ready to proceed? Off the record just one second.

(Discussion outside the record.)

Exam. Taylor: Proceed, Mr. Cole.

J. O. McClintock resumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Cole:

Q. Mr. McClintock, when you purchase grain from the——

A. Mr. Examiner, I would like to start in where we left off and I would say that I had not finished the answer to the last question.

Q. Do you recall what we were talking about?

A. That is a little bit——

Mr. Belnap: Off the record.

(Discussion outside the record.)

By Mr. Cole:

Q. During the season of open navigation would the grain that you secure from the river origins be related to the

Chicago price in the same manner in which it is now related to the Chicago price?

Mr. Belnap: That is assuming the proposal under attack?
[fol. 2488] Mr. Cole: I don't want to assume anything. I did not assume anything other than stated in the question.
Mr. Belnap: You said, "would it"? Under some circumstances it must be, Mr. Cole.
Mr. Cole: I said during the season of open navigation.
Mr. Belnap: Then you asked him about a future, would it?
Mr. Cole: Yes, during the season of open navigation.
Mr. Belnap: But you must necessarily be assuming if the proposed rule becomes effective, are you not? There is nothing to answer about otherwise.
Mr. Cole: Well, all right. Now, we will put Mr. Belnap's——
Mr. Brown: Do you mean it would be the same as it would during the closed season?
Mr. Cole: No.
Mr. Belnap: The same way as it is today?
Mr. Cole: No.

Q. If the proposed rule is made effective and is in effect next summer during the period of open lake navigation and you buy grain next summer down there in the river origin country, would then the price that you pay in the river territory be related to the Chicago price in the same way in which it is now,—in which it was this past summer related to the Chicago price?

A. I would say during that period, based on conditions, general conditions being the same next summer, in the [fol. 2489] period you mentioned as they are under ordinary circumstances in preceding years that the price during that period would not necessarily be different from the situation as it now exists and I believe the proposition was mentioned by you that we would in that event, if we found it necessary to use the lake as the outlet for our accumulations on the barge, that we would necessarily buy less lake local corn. That was incorporated in your statement, I believe, previous to our adjournment.

Q. All right. Previous to adjournment I had been talking about that but now I will ask you again, if you during the season of open navigation on the lake secured approxi-

mately one million bushel- a month from your river origins of the river corn, which corn you were making disposition of out over the lake, would you during that same period, to-wit, the period of open navigation purchase the lake local billing?

A. We would purchase less of that lake local billing because we would then be using the outlet that we had formerly had for lake local billing with our barge billing entirely and to that extent the buying power of Continental Grain Company and the other elevators in this market similarly situated would be lost to the market here and the effect would be that the lake local billing corn would probably drift in value to the differentials that exist between the lake local basis and the I. P. basis, in which event the producer would be the primary loser in such instance. [fol. 2490] Q. Now, Mr. McClintock, I am asking you this as a representative of that group that you do represent: If both the ex-river grain and the lake local grain were placed in the same category, limited to escape via lake, and if there became necessary to you to make any choice as to which avenue you would cut down on what would be your cut down area?

A. Mr. Cole, as an operator of a grain elevator in the Chicago market we are unwilling to trade anything we have for something we haven't got. We would like to have the additional benefit of having the lake local corn work in the same manner that our barge billing corn does but we are unwilling to make any trades to accomplish that purpose, if that is what you mean.

Q. No, I am not asking you as if you were in position to make a trade. I said that suppose——

A. Well, it is an assumption and your question was an assumption.

Q. No. Now, let us suppose that this situation actually faces you as a fact: If this proposed change was made effective on the rates and if the ex-barge grain had only the oultet of the lake and if the lake local rail grain had only the outlet of the lake and if you were forced as an operator to choose between your area of origin in which you were securing your corn, would you continue to get all of the ex-marge grain that you could possibly get or would you continue to get all of the lake local billing that you could possibly get and if you had to make a choice between

[fol. 2491] them which would you cut down upon in quantity?

A. Your question is based on the premises that if the situation developed where the barge billing and the lake local corn all worked out of here under the same rate structure?

Q. Yes, sir.

A. And that the value of one, so far as that is concerned, was comparative to the other?

Q. Yes, sir.

A. That would depend on how the equalization was effected. If you make that equalization by restricting the movement from both of those origins via lake rather than making the lake local applicable the same as barge billing now is there would be a considerable difference in my answer.

Exam. Taylor: Well, right along that line, if you will permit an interruption: Mr. McClintock, if you had flat rates into and out of Chicago would that eliminate any necessity for discounting the price of grain?

The Witness: Mr. Examiner, it is my opinion that if we had only flat rates out of Chicago from the territory that we originate our grain from, and this particular grain that we are referring to here in the lake local and barge territory is in the doorstep of Chicago, there wouldn't be any excuse for anybody going into the grain business in Chicago. Our out then would be to get out of the Chicago market because you could not continue to conduct a merchandising business through a channel that has those handi-[fol. 2492] caps placed against it.

Q. Well, my question intended that all of the rates would be on a flat rate basis into and out of Chicago.

A. In and out of Chicago?

Q. Yes, on an equality.

A. That would depend then on how we were equalized with other gateways. If you get down strictly to a mileage basis, and that is what I understand your question might imply, then we would find a lot of markets like Chicago and probably other locations rather misplaced and I don't think that we could qualify the possibilities that might exist under those conditions.

Exam. Taylor: Well, that is as far as you need to go. Proceed, Mr. Cole.

By Mr. Cole:

Q. Now, Mr. McClintock, you are today securing your grain receipts from rail areas coming in here via rail, which are distantly located. You are getting some rail grain in here from what we call lake local territory and you are getting some grain in here ex-river, so that your grain is coming in through all those channels today, is it not?

A. That is true.

Q. Approximately 15 per cent of your grain,—I am not talking now just your company but the group you represent,—comes in here ex-river, doesn't it?

A. 15 per cent?

[fol. 2493] Q. Yes, about 15 per cent of your corn comes in here ex-river?

A. Well, I think that is about right.

Q. Less than that percentage comes in from rail-lake local territory, does it not?

A. Oh, no, I don't think so.

Q. What percentage do you think comes in from lake local territory rail?

A. A much larger proportion. If you look at the map here that we had in the exhibit yesterday, I believe it was Mr. Tannehill's exhibit number 3, and see the lines that he drew, from within those lines all that territory had lake local billing. Now, that is the territory that Chicago is most apt to draw its corn from.

Q. Well, what percentage of Chicago's receipts should come from there, do you think?

A. What percentage of them?

Q. Yes.

A. Well, I would say it might run up to 75 per cent or even higher than that, maybe 90.

Q. Then under the present conditions, under present conditions we take it, then, that 75 per cent of the grain that reaches the Chicago market reaches it from lake local territory on rail billing, is that your answer?

A. 75 per cent of the rail billing that comes into Chicago is—this is just a rough estimate, I haven't made any study [fol. 2494] of the figures whatever,—would possibly originate within that territory.

Q. That is, within your lake local territory?

A. What is that?

Q. Within lake local territory?

A. Yes, sir.

Q. And about 75 per cent of the corn that reaches the Chicago market would come from the territory——

A. I am speaking about corn.

Q. —would come from the territory of lake local billing, is that correct?

A. That is just a rough estimate.

Q. And, therefore, 75 per cent of the corn receipts in the Chicago market at the present time is being handled into this market under a condition which now does definitely limit that receipt to outbound movement via the lake only, is that correct?

A. No.

Q. Where else can it escape?

A. To local industries here in Chicago. Now, these figures that I gave you, that I read into the record here, representing 83 per cent, was the business shipped out of Chicago. It did not include the grain that the industries here such as Corn Products and American Maize and other feed manufacturers might have bought.

Q. What percentage of the annual receipts of corn would you say was consumed locally then?

[fol. 2495] A. Well, I think there is some——

Mr. Belnap: That is definitely in the record in your exhibit, isn't it?

The Witness: I think there are some definite figures on that, or rather definite, the disappearance of corn in Chicago other than what is shipped but I don't have that in mind. They are substantial.

By Mr. Cole:

Q. It is covered by your exhibit, Mr. McClintock?

A. I believe it does show the local consumption and other disposition, yes.

Mr. Belnap: And unaccounted for.

By Mr. Cole:

Q. And unaccounted for; that is that line there.

A. Now, that is corn. When you come over in corn—this is principally corn; I believe we are speaking about corn. You can see the figure amounted to thirty million bushel in 1939. It ranged all the way from 26 up to 33.

By Exam. Taylor:

Q. Million?
A. Million, yes.
Q. 33 million bushels?
A. Yes, 33 million bushels.

By Mr. Cole:

Q. In 1936, 1937, 1938 and 1939 that local consumption has amounted to better than 30 million bushels of corn annually. All of that local consumption could get in here on lake local billing from lake local origin territory and still not bother your various worries that you expressed [fol. 2496] on the record as to getting out of Chicago with billing, could it not?

A. We don't worry about anything the processor buys. He is a factor in——

Exam. Taylor: Well, Mr. McClintock, that is not responsive to the question. I am going to hold you responsive to the question. Read the question.

(Question read.)

Exam. Taylor: If you can, answer the question yes or no and then make your explanation, it will help us a lot.

The Witness: We would be relieved from any worries in regard to that volume of corn.

By Mr. Cole:

Q. When you purchase your grain, on your direct you said that at all times you purchase it on the basis of the delivery of that grain in Chicago, free on board in Chicago, is that correct?

Exam. Taylor: He said, "c.i.f."

By Mr. Cole:

Q. Or c.i.f.?
A. Are you speaking now of barge billing?
Q. Well, either barge or rail billing.
A. Well, we buy it delivered Chicago, which in the case of rail stuff means delivered in Chicago freight paid and in the case of barge billing it means the freight and the

trimming charges. The seller absorbs the transportation charges.

Q. On the lake local billing——

A. Now, just a moment.

[fol. 2497] Q. All right.

A. That does not refer to stuff that we buy at our own locations at LaSalle and places like that.

Q. And ship to yourselves?

A. And ship to ourselves.

Q. But any stuff that you buy in Chicago or buy from a person for delivery to you in Chicago is bought on the basis that the grain is to be delivered to you in Chicago free of any transportation charges, is that correct?

A. I would have to qualify that by saying "Yes" when you say free of any transportation charges as long as there is a penalty inflicted on this lake local billing inbound when it is used outbound. If we undertook to use that billing outbound then the buyer would be assessed whatever penalty is inflicted on that particlar bill between the lake local and the I. P., whatever it might be, which ranges from a cent—from half a cent up to five cents a hundred.

Q. Well, I am still getting at grain in to you and we haven't considered the poor buyer yet. You are getting it into your elevator and when you buy it do you buy that corn that comes in here on lake local or any other basis, as far as that is concerned, so that when it is delivered in your house here you have to have Chicago delivery price without any freight charges being hooked up with it at all?

A. That is right. The terms of the contract would specify [fol. 2498] whether we bought it on lake local or whatever class of billing that we bought it on.

By Exam. Taylor:

Q. And where you go back to the seller to make up the difference between the lake local and the I. P. you do not stand that additional charge, do you? You bill back on him for that.

A. When?

Q. On the price of the grain.

A. Now, that is up to Chicago?

Q. Yes.
A. That is up to Chicago.
Q. Yes.
A. If we buy it on lake local billing, then the seller is obligated to pay the lake local freight.
Q. I say, that does not come out of your pocket?
A. No, no.

Exam. Taylor: All right.
Mr. Belnap: The lake local does not come out of his pocket. That is all you are talking about.
The Witness: That is what he is talking about, the lake local.
Exam. Taylor: The difference between the lake local and the I. P.
Mr. Belnap: That is a different problem.
The Witness: If we go out, when we use that out, then [fol. 2499] there is the condition. If we attempt to use that bill that paid on the five cent local in here, if we attempt to use that bill on an outbound rail shipment, then that is the penalty.
Exam. Taylor: Yes, but that penalty is not paid by you?
A. Yes, it is.
Q. It is assessed against the shipper.
A. No, no. If I buy that grain from a shipper on a lake local basis, we will say, for example, five cent lake local basis and then I attempt to use that bill out on a rail shipment, the inbound carrier will assess me the difference between that lake local and the I. P. if I attempt to take advantage of the reshipping rate out of here.
Q. Yes, but that is not a condition in the sale. So that on this 57 cent proposition, this old 57 cents we have been talking about, any such cars that you wanted to ship out on a reshipping rate, proportional reshipping rate, isn't it bought,—the price that you pay conditioned on that shrink?
A. I think there is testimony to show that there has been—that corn has at times been bought at some discount but only in event that you buy that corn at a discount that is representative entirely of the difference between the lake local and the I. P. does the buyer have protection.
Q. Well, how often is it bought that way?
A. Not frequently under present conditions because we haven't attempted it. We realize that it is an impossible

[fol. 2500] situation for the buyer to absorb the penalty and we have used that kind of billing out on our lake local shipments—or out on our lake shipments by steamer.

Mr. Belnap: May I understand now——

Mr. Cole: I will get it straight if you will let me.

Mr. Belnap: I can do it in less words, I think.

Q. You spoke about in your direct the lake local during the season of open navigation is ordinarily sold at just the prevailing delivered basis?

A. That is true.

Q. Now, when that is so and you do use that grain to go out by rail, it is all put on you as the buyer of the grain, is it not, the penalty?

A. That is true.

Q. In any event the fellow that sold the grain to you, the contract is completed when the grain is delivered to you?

A. That is correct.

Q. You can never get back on him?

A. That is correct.

Q. But you can discount it at the time of purchase?

A. Yes, on the original purchase you can discount it in the price.

Q. And did I understand you to say that the discount hardly ever under present conditions got over half a cent a bushel?

A. That is the testimony, yes.

[fol. 2501] Q. Regardless of how much the difference was between the I. P. and the lake local situation?

A. The competitive situation determines that. Here we have processors that buy that grain. That is a competitive situation. Here is 30 million that processors buy. They create a competitive situation in this market.

By Mr. Cole:

Q. Then, Mr. McClintock, the lake local origin, it is dependent upon the rail local rate in here because of the possibility of using the grain satisfactorily as shown; that they can pay and do pay within a half a cent of the value here of any other grain that reaches this market, is that correct?

A. That is the history so far as 1939 in a general way is concerned.

Q. Now, when you get this lake local——

Mr. Belnap: Have you completed your statement?

Mr. Cole: I beg your pardon.

The Witness: But there are circumstances surrounding 1939 that make the situation just a little bit abnormal and that is due to the corn that is being held back on the farms and at interior points under the government loan program and the receipts of corn here are not in proportion to what would normally—what they would normally be considering the production that we have had in this state for the past two years and that is why the corn that the processors buy in this market is of a more competitive importance at this time than it would be when Chicago was getting [fol. 2502] larger receipts of grain.

By Mr. Cole:

Q. Well, now, as I understand it we have so far discussed two dispositions of the corn that gets in here rail on lake local. Some of it may go out on the lake during seasons of open navigation and a substantial quantity is consumed locally in the Chicago area, is that correct?

A. That is correct.

Q. Now, is there not a third escape for the corn that gets into Chicago from your lake local origins? For instance, a good many of those origins that the lake locals apply to Chicago from have through rates to destinations in Official territory. When you move out corn to any of those destinations in Official territory, from which you find there are through rates from your lake local origins, do you go back and get that lake local billing, surrender it to your outbound rail carrier and secure the benefit of the transit balance beyond Chicago?

A. If that particular billing happens to be the best we got to reach the particular destination in which we may endeavor or may sell corn or grain then that is the billing we use and the price is predicated on using the best billing that we have.

Q. Yes, I understand your price. Now, when that——

Mr. Belnap: Mr. Cole, in asking that question were you considering the through rates which are just equal to the interstate local to Chicago plus the reshipping beyond?

Mr. Cole: No, I am considering those one-factor through [fol. 2503] rates that apply——.

Mr. Belnap: Like the Battle Creek situation?

Mr. Cole: Well, that is an illustration of it but there are many more of them.

Mr. Belnap: All right.

The Witness: There is some of that billing used, or some of the lake billing can be used to the destinations.

By Mr. Cole:

Q. When that grain comes into Chicago on the lake local it pays the lake local and the producer who has sold you that grain dependent upon the Chicago price has paid that freight rate up to Chicago. When you go out there is found to be a material benefit in a number of instances where the transit balance that is still to be paid to the carrier is substantially under any of the other bases of rates out. Is that ability to use such lower transit balances considered in the way of attaching extra importance to the desire to get the lake local billing in here?

A. In the first place, your statement is incorrect that these transit balances does represent the best billing that came in here. For example, you can take Battle Creek; this is in the record. The best billing to Battle Creek is billing that originates down in Central Illinois and pays a 12 cent rate into Chicago and goes out for 7 cents and the price level that the Battle Creek buyer has to pay is predicated on whether we have a bill in our file that can get up there for 7 cents or whether we want to use a lake [fol. 2504] local bill and break it down to 7 cents by absorbing the inbound penalty that is applied to get it up to the I. P. basis, so there is no advantage so far as the Chicago dealer is concerned. In other words, you do not sell corn to Battle Creek out of here on the basis of the reshipping rate ever, so far as I know,—15 cents a hundred.

A. No, sir. If there is an origin point in Central and Southern Illinois it would have to be as much as 12 cents to get it in here, which 12 cents the producer would absorb and you would still be able to get that grain into Chicago at the Chicago level f.o.b. so it would not cost you anything you would still consider it a penalty against you, wouldn't you?

A. I consider it a penalty against me because the dealer down at Decatur or some other Central Illinois point may have accumulated billing down there that was bought on the Chicago basis against a 12 cent freight bill and, consequently, when he sold it to Battle Creek on a 7 cent balance, whereas I am compelled to make my price on a basis of whatever the balance is represented in the lake local, which varies, and in that condition I am non-competitive if someone down at Decatur or down in that locality has a bill that he can go to Battle Creek for 7 cents over Chicago.

Q. Yes, sir. When that situation comes up then even though you have secured the grain from the lake local origin territory and even where your seller, the man you bought it [fol. 2505] from, paid the freight rate into Chicago and you still bought that grain f.o.b. Chicago and you had it in your house at the Chicago price now, you would consider it a penalty because some origin further away had a balance arrangement so that he could move it out at 3 cents under the 10 cent balance that you had available, is that not correct?

A. He has got a balance and I have a balance but my balance is due to the infliction of the penalty on the inbound movement.

Q. And you refer to that as a penalty on the inbound movement because that producer would have to ship it in here from a more distant point and that producer would have to absorb more of the freight charges in the total movement than the producer would have to absorb located closer to Chicago, is that correct?

A. That is correct. So far as the producer is concerned that is a geographically inherent condition.

Q. Does the group that you represent handle substantially all of the ex-river grain that is handled in Chicago?

A. I would say substantially so although there is one house here that is located on the water that has unloading facilities and do engage in water business to some extent. I would say that the protestants here handle most of the river business.

Q. Now, you said on your direct that when you sell your grain here a rule of the Board of Trade requires you to give billing with that sale which would enable the purchaser to go to New York with that grain on a 26 cent rate,—correct?

[fol. 2506] A. Yes, sir.

Q. Now, you compute your price so that in your price there is that 26 cents to take it there, don't you?

A. Well, unfortunately, when you make a deal on a future contract you are rather insignificant when it comes to computing prices. The price is established in a public market. When you make a deal on a futures contract, why, you are not very important in establishing the price.

Q. Well, that futures contract that you have sold here at 57 cents is, as I understand it, a contract to deliver at Chicago grain for the amount of 57 cents a bushel. You do not need to transport it any place for the 57 cents, do you?

A. But there is attached to that an obligation when you effect delivery that you must furnish with the delivery of that grain billing that will take him to New York, for example, at 26 cents a hundred.

Q. And he would pay that 26 cents?

A. If he shipped it to New York, yes.

Q. In addition to the 57 cents that he paid you?

A. Yes, and the elevation charge which I mentioned this morning.

Q. Yes, sir. When you make these sales of grain you are not concerned and you do not bear the freight charges, do you? You figure your price to include those, don't you?

A. On a delivery basis I have a definite obligation and responsibility in the freight charge that if I deliver him [fol. 2507] a bill from Morris, Illinois that came in here on 5 cents he is compelled to pay the inbound penalty that is inflicted against that bill on his movement to New York and under the rules of the Board of Trade I am obliged to make that good. In other words, the rules protect the recipient of those deliveries to the extent that he is guaranteed an escape with that grain to Trunk Line territory at the proportional rates.

Q. All right. Now, suppose that the man who purchases that grain from you for May delivery, when May comes around you give him the grain and you give him the billing that entitles him to get to New York and he wants to go to New York but he sees an opportunity to ship over the lake, which is then open to navigation, so he comes to you and he says, "I don't want to pay 26 cents to go to New York. Give me that billing. I have got a lake vessel down here that I am going to ship that stuff in." Now, I assume

that in that eventuality he would only have to pay the lake charges plus the canal charges and he could move his shipment to New York, couldn't he?

A. Certainly, that is why a qualified public elevator in Illinois,—a qualified public elevator in Chicago has to be on the lake where the buyer of the grain can have that escape if he so chooses to use it.

Q. Yes. And in that eventuality he only pays the level of transportation charges applicable to the water borne traffic over the lake and over the canal and then to New York?

[fol. 2508] A. That is correct.

Q. Now, in that case what happens to that bill that you had to have behind it that would enable somebody to move a shipment of goods from Chicago over to New York on the 26 cent rate?

A. Your question, as I understand it, was premised on the basis that he took delivery of that grain in our elevator and paid us for it and we turned him over billing that would go to New York for 26 cents and then in that case he elected to go out by water? That would be the only billing that he would have so far as we were concerned and he would then cancel that billing against his lake shipment.

Q. Then he would cancel the billing that would entitle him to go out on the 26 cent rate against a shipment that moved out via ake?

A. Yes, sir.

Q. Has that happened?

A. Well, I would say yes.

Q. Does it happen very often?

A. Well, I think I can safely say "Yes." It is one of the things that happens frequently on the market.

Q. Well, why would the man take the 26 cent bill down there is it wouldn't do him any good, where he could come to you and say to you, "Well, give me some lake local billing, I will cancel it and let you keep that because this is not going to do me any good"?

[fol. 2509] A. There wouldn't be anything to keep him from it as far as that is concerned.

Q. All right, but he wouldn't be small enough to do a thing like that; it wouldn't benefit him any, would it?

A. No, he would receive no benefit.

Q. And he would be taking something away from you that would benefit you, wouldn't he?

A. Perhaps that billing, we would rather retain it and cancel lake local billing but this man that took this grain might be a New York man, he might be a Toledo man or he might be a Buffalo man. There isn't very much sentiment in the grain business that they take the opportunity to hand back privileges to one another.

Q. Mr. McClintock, when sales are made and it is determined that instead of moving goods rail the movement is to be made via the lake——

A. Will you start that over again, please?

Q. Yes. When a sale is made like that, now, and it is determined,—you learn that the purchaser is going to use the lake to get it over there, is it customary to cancel the rail billing behind that or is it customary to cancel lake local or some other billing behind it?

A. I think the whole question here involves—I was trying to answer your question on the basis that you asked it and I repeated the premise on which you based that [fol. 2510] question and that was that the man accepts the grain in your elevator, pays for it and gets himself the billing covering that shipment which I am obliged to give him.

Q. Yes, if he got the billing.

A. Yes.

Q. Yes.

A. Now, based on that premise that billing is no longer ours. It is his.

Q. That is right.

A. And he cancels that particular shipment regardless of where he goes, but if you will let me assume what you mean in this next question, that in the event that delivery is made he pays for the grain but he don't ask for the tonnages covering that grain, he is undecided yet what he is going to do.

Q. Yes.

A. He don't know whether he will move it out by lake or by rail.

Q. That is it.

A. But in event that he does elect to load it out by water we are not obligated as a public elevator to cancel 26 cent billing to New York, is that what you mean?

Q. Yes, and in that eventuality what has been the practice of the elevators?

A. In that case I would say the practice would be ovious, that if we are left a choice as to the billing that we can cancel we would cancel that which is most undesirable to us. [fol. 2511] Q. You testified at one place in your direct that Ohio grain also paid a 26 cent rate to New York and Chicago could get to New York on the rail proportional of 26 cents and there was some territory intermediate between Ohio and Chicago that had to pay correspondingly higher rates than 26 cents, dependent upon their distance from New York, is that correct?

A. That is the situation that exists so far as the rail movement is concerned as compared to the reshipping rate out of Chicago. There are intermediate points such as Indiana that are higher than the proportionals out of Chicago.

Q. And I understood that you said in the final analysis of it that didn't make much difference because everything was based uopn the Chicago price but I want to call your attention now to this point: Grain is bought by you f.o.b. Chicago and it is in Chicago and it assumes a certain market price. Take that same 57 cents future, which you bought for 56½ cents. And you can move that grain, say, to New York on a balance of 26 cents from down in Ohio. If that man purchases grain down there in Ohio he has to pay the same 26 cents to get his grain to New York, does he not?

A. Yes, that is right.

Q. And you appreciate, of course, that there is some 300 miles,—he is some 300 miles nearer New York than Chicago is, you appreciate that?

A. I accept the mileage.

Q. Would that not force down, or, rather, work as a [fol. 2512] blanket upon the ability of the Ohio man nearer to New York being able to secure any higher prices than the merchant in Chicago can get for his grain in Chicago, way out here in the west?

A. Are you comparing the farmer in Ohio with the grain dealer in Chicago?

Q. Well, I am comparing two people, one person in Ohio with grain, with a man in Chicago with grain. They are both American citizens. Whether one is a farmer and one a merchant I did not go into. They are both American citizens with corn behind them.

A. Well, then we must assume that when you are talking

about the Chicago man you are talking about the dealer in Chicago.

Q. Well, I assume so.

A. Well, I would say that the Ohio man is probably the most favored farmer in the grain belt as he is one of the few that can get the Chicago price at his original shipping point.

Q. Because of his geographical location?

A. Because of the rate structure, which, I understood you to indicate, was probably based on geographical location.

Mr. Cole: That is all. Thank you.

Exam. Taylor: Off the record.

(Discussion outside the record.)

By Mr. Cole:

Q. Mr. McClintock, you said several times that your main concern in your drive in your business is to handle as large a volume as it was possible for you to handle, is that cor-
[fol. 2513] rect?

A. That is the premise of the whole grain business.

Q. Yes, sir. Then you answered me, too, that you could always sell, except in certain exceptional circumstances which did not happen very often, you could always sell any grain that you bought on a future contract, did I understand you correct?

A. I can sell it on a futures contract. I can hedge the corn and wait.

Q. Yes, sir. Now, if you had——

Mr. Belnap: Wait a minute, he has not finished the answer.

The Witness: But there is an obligation associated with leaving that corn in that hedge for the purpose of making final disposition of that corn and that is the rate situation which I have mentioned many times.

By Mr. Cole:

Q. Yes, I understand. Now, you can always hedge any corn that you ever bought if you want to handle volume. If you hedge your grain it is an insurance against a loss on any that you might purchase. Are we safe, then, in

assuming that the drive or the thing that is the uncertain quantity and the only single uncertain quantity that the grain business has is to get that grain, is that correct?

A. To get it and be able to dispose of it, that is hooked up with the possibilities that the rate structure forces you out of the market in which you are dealing.

Q. That is understood. Now, I am not talking about [fol. 2514] rates in this branch of my examination. I am not trying to go into those at all.

A. That is the fundamental on which the possibilities to engage in that volume are founded on.

Q. What is that, the ability to get the grain?

A. The ability to get the grain and not have obstacles placed aaginst the movement at your concentration point, such as we are talking about here in Chicago.

Q. You can always hedge your grain; you can hedge every bit that you have been able to buy, is that correct?

Exam. Taylor: He has answered that once.

Mr. Belnap: Three times.

Mr. Cole: Well, I know, but he puts in something else that gets me off on the—pardon me.

The Witness: That is what I intended to do, get you right.

Q. The only uncertain angle connected with the ability of the grain firms, then, to handle the big volume is the demand that there is, then, upon the grain people to buy as much grain as possible, isn't that so?

A. We are governed in our buying activity by our selling activity. They are both complementary to one another. We do not buy grain just for the sake of bringing it into Chicago and storing it. We buy it for merchandising beyond and I repeat that the possibilities of engaging under those circumstances is definitely related to the rate structure out of the market.

[fol. 2515] Q. If you can hedge as much grain as you can buy and if that would work to insure against your purchases, then your ability to handle volume depends only upon one thing, the amount of grain that you would be able to buy delivered in Chicago at the Chicago price, would it not?

A. Mr. Cole, I don't like to be in a position of repeating circumstances. I said at the very beginning that there were two objectives that the operator of a public elevator had in mind: One was to have stocks on hand that he could

make delivery on future contracts and the other was to engage in the merchandising business beyond the location where he accumulated the grain and for the third and fourth time I repeat again that that whole situation is hooked up definitely with the rate situation that exists on the out movement out of Chicago. We could bring a million bushels of grain in here or five million bushels and put it in an elevator down here. We could carry it in in stacks or buggies or any kind of vehicle and put it in an elevator and hedge it but we could not consume—we could not consummate a final transaction on that grain which would determine whether we were making any money on it or not until we were able to dispose of that grain. If you could forget for a minute that we are in the grain business and say that we are in the same position as an automobile dealer downtown, he can fill up his warehouse with automobiles but he performs no service for himself or for the manufacturer of that product until he disposes of it into use or consump-
[fol. 2516] tion. That is our position.

Q. Mr. McClintock, the basis for my question was just this: Assuming that every single solitary bit of grain that you ever could get into a warehouse now would have the ability to use the 26 cent rate from Chicago to New York, just assume that, and you have already said several times that you could sell on futures contract every bit of all grain that you ever bought, there is always a future contract for it, and then you know that you could sell every bit of grain that you buy and you had billing there for every bit of grain that you could possibly buy, in that event would the size or volume of your business depend solely and wholly upon the amount of grain that you could buy?

A. Yes.

Q. All right.

A. To this extent: We have filled that elevator up with grain and effected delivery on it because we had it. It then becomes public storage and we have no further control of that grain, so are unable to engage in the other feature of the grain business, that is, merchandising, so long as our elevator is tied up with the corn that we have made delivery of. That is why I endeavored to impress on you that it is necessary for the operator of an elevator to have more than

one escape for the grain that he accumulates, more than one possibility of disposing of it.

Q. Now, with that thought that you have just gone into in mind and the thing definitely in our mind as to what it [fol. 2517] takes to increase your volume, that is, the ability to buy the grain, I want to ask you if we are correct in this now: You get all your grain in Chicago at the Chicago delivered price. Formerly, before this water transportation began, these farmers around in the territory in Illinois were securing a price limited at their station, at their farm every farmer and dealer dependent on the Chicago price less the railroad freight charges into the Chicago area. Do you recall that testimony, is that correct so far?

A. No, I do not. I recall that there was some witnesses testified that when corn was on that basis, on an all rail basis into Chicago, and where only the I. P. rate was in effect that they were able to get considerable of that corn.

Q. Who were able to get considerable?

A. Indianapolis and Decatur, I believe, were the two witnesses that testified that the present rate structure including the lake locals and the barge rates into Chicago prevented them from acquiring business in the Illinois valley because it was coming into Chicago.

Q. Then the farmer in the rail origin territory before the water transportation began was able to secure a price dependent upon either the rail transportation cost to Chicago or the rail transportation cost to some other market, whichever rail transportation cost happened to be lower, is that correct?

A. Certainly. The price which a farmer gets for his grain is always—the cost of transportation is always involved and [fol. 2518] the character and degree thereof and the greater the degree of the transportation cost at his market he gets correspondingly less.

Q. Now, I think on your direct you also stated that if you used the ex-river grain to Chicago for this escape over the lake and if because of that situation you used less of the lake local corn from the lake local corn area that probably that lake local value back in the origin territory would drop, do you remember that, because it wasn't in sufficient demand here.

A. Yes, that is correct.

Q. Then you also at another point on your direct said that when the lake local corn could not get into the Chicago

market, when the demand for that lessened, and when more grain was handled on the waterways, when this increasing quantity came up the waterway, that the taking away of this water grain lessened the territory which these other markets reached into, which threw those demands of those other markets into this lake local territory and that would increase the price paid to the origins in the lake local territory, do you remember that?

A. I don't remember it. When I made that statement I was referring to the territory removed from the river.

Q. Yes.

A. And I said that probably if we can rely on the testimony as submitted here by Mr. Bradford and the gentleman from Decatur that they were crowded out of the Illinois River by virtue of the fact of the price level being raised [fol. 2519] at the points of origin due to the cheap rate into Chicago, that the only way they could get back into this territory would be to have the price level lowered at the point of production based on the measured distance in transportation cost.

Q. Now, it is, of course, definite that both of these things could not happen at the same time and, in your judgment, which do you think would happen?

A. I want to disagree with you that they could not both happen, if I understand what you meant by "they could not both happen."

Q. Well, here is the thing: At one place there was the theory that the increasing movement via the barge lines had decreased the area that other markets had been getting into, that it deprived them of their ability to get grain in that area because the grain was coming to Chicago. Then you said that if you handle all of the ex-barge grain over the lake it would probably lessen your demand for the lake local billing. Then in another place you said that the lake local billing area because of these facts would make your grain less available to the farmer. Then when you talked about the taking away of that other through rate to those other markets you said they would be forced into this same market, with that drop in consequence of Chicago.

A. I think I understand what you mean.

Q. It is a round circle, isn't it?

A. That is right and you ask me what I think will happen?

[fol. 2520] Q. Yes.

A. What I think will happen is in event that we lose the,—the protestants lose the reshipping privileges out of Chicago on barge billing will be this that there will be less demand for lake local corn on account of having to employ the lake for the use of our barge billing corn and the effect will be that corn on the lake local instead of selling at a half a cent or in some cases no penalty will sell at the full discount or near it, depending on volume.

Q. In Chicago?

A. In Chicago, and in that case a part of the boys that are on the side favoring discontinuing these rates will be affected because it will do the very thing that the Indianapolis dealer said it would, it will throw it back to a level where the Indianapolis man can come in and take that grain and take it away from Chicago and it will affect the merchant in Chicago, the receiver, it will affect the Board of Trade as a unit in decreasing the volume. It will affect the merchants in Chicago from the angle of the shipper and it will hurt the fel-ow back removed from the river because he is again engaged in a competitive situation from a territory that he had formerly been away from. Does that make it clear?

Q. Yes, I understand you exactly. In other words, your position is that if this change is made the change will definitely hurt not the shippers along the river but decidedly [fol. 2521] the shippers of rail grain?

A. I did not exclude the protestants who have equipment down on the river, in the elevators on the river. If we are confined to the escape out of here by lake,—we have gone over it many times,—we have only a seven months possibility.

Q. I understand that. During that seven months, though, there won't be any trouble.

Mr. Macaulay: Go ahead and proceed on that question.

Mr. Cole: Wait a minute. Why should he proceed on that question? He has answered it.

Mr. Macaulay: I don't think he has answered it fully, Mr. Cole.

Mr. Cole: I am satisfied with the answer so far.

The Witness: I think it has all been covered.

Mr. Macaulay: All right.

Mr. Cole: I think that cleans up my notes. Thank you.

Exam. Taylor: Recess five minutes.

(Whereupon a short recess was had.)

Exam. Taylor: Proceed. Mr. Garrison, do you want to make a statement on the record?

Mr. Garrison: The exhibits or records to be furnished by the Central Inspection Bureau, four complete copies will be ready for mailing tomorrow morning. The other six copies will be available by tomorrow a week, that is, the last of next week and the Inspection Bureau would like to have [fol. 2522] the parties to whom we should mail these documents.

Exam. Taylor: You want their addresses?

Mr. Garrison: Yes, I want the parties and their address.

Exam. Taylor: All right, I will get it right now. Can you take them or do you want their cards?

Mr. Garrison: Yes, their cards will be all right.

Exam. Taylor: If you have your cards, gentlemen, pass them over to Mr. Garrison. Now, off the record a second.

(Discussion outside the record.)

Exam. Taylor: All right. Now, Mr. Day?

Mr. Day: No questions.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. McClintock, referring to the contract between Continental and the Cooperative Allied Grain Dealers Corporation, which you mentioned on your direct, that contract, I believe, is dated May 13, 1939.

A. I believe along about that time. I don't have the exact date in mind.

Q. Does it contain the following provisions which I will now enumerate? That you will acquire the land, build an elevator equipped to operate for the handling of grain, to be sold to the Allied under arrangements whereby the Allied at the end of the five year period will reimburse you for all expenses incurred of every kind and nature and also four and a half per cent interest on the money outlay until it is paid back?

[fol. 2523] A. Well, I can't recall whether your citations there were the exact words or not but in principle that was the agreement, the nature of the agreement. I testified yesterday I was not sure whether the rate of interest was four or four and a half but I would answer "Yes" to your question in that it is my recollection that those stipulations were set forth in the agreement.

Q. Does it further provide that immediately upon completion of the elevator and its readiness for operation that possession shall be delivered to the Allied and held by it subject to the terms of the agreement for a period of five years from the date of delivery of possession?

A. I would answer yes.

Q. In reference to the payment by Allied to Continental of the purchase price does it provide that the Allied shall set aside and later pay over to Continental a half a cent a bushel for each bushel of grain handled through the elevator?

A. That is correct.

Q. Does it further provide that the amount so paid by Allied to Continental shall first be applied to the payment of interest on the purchase price and the balance of such payments to be applied on account of the purchase price?

A. That is correct.

Q. Does it further provide that in case such purchase price and interest shall not have been paid in full at or prior to the expiration of the five year period then the deed and [fol. 2524] possession of the elevator shall immediately upon the expiration of the five year period be returned to Continental for cancellation?

A. I believe that provision is in there.

Q. Does it further provide that the Allied agrees to sell all grain delivered to said elevator during the period of five years from the date of delivery of the elevator to Allied and irrespective as to whether the purchase price shall have been paid in full prior to the expiration of said five year period to Continental all rail bids for grain submitted by Continental to Allied and that Continental agrees to purchase from Allied all of said grain in accordance with such bid price?

A. Would you repeat the last two lines there?

Q. And does it further provide that Continental agrees to purchase from Allied all of such grain in accordance with such bid price?

A. That is correct.

Q. Does it further provide an undertaking on the part of Allied not to sell or dispose of any grain delivered to said elevator to any other person, firm or corporation whatsoever but to sell all of such grain exclusively to Continental?

A. So far as the contract is concerned that is correct.

Q. Does it further provide that in case at the expiration of said five year period from the date of delivery of said elevator to Allied the payments made by Allied on account of the purchase price shall not be sufficient to pay such pur-
[fol. 2525] chase price and interest in full then all right, title and interest of Allied in and to said land, elevator, and so forth, shall cease and terminate upon the expiration of said period of five years and that possession of said elevator and all appurtenances shall be at once delivered to Continental and the payments made by Allied on account of such purchase price shall be retained by Continental and be deemed to be rental paid for said property during said period?

A. That is correct.

Q. Is it further provided therein that in case the Allied shall make default in any payment or violate any of the provisions of the agreement and any such default shall continue for a period of ten days then Continental may, at its sole option and election, terminate the agreement and Allied thereupon at once will deliver and surrender possession to Continental and Continental to have the right to retain any and all payments theretofore made under the agreement as rental up to the termination?

A. It is my recollection that that is so stipulated.

Mr. Belnap: Mr. Examiner, I did not object, nor did I intend to object to the evidence with regard to the contract on the ground of immateriality and so, consequently, I am not entitled to ask this question, but if Mr. Enoch cares to do so I would like to know from him as to what he conceives to be the significance of the terms of that contract or materiality to any issue pending in this proceeding?

[fol. 2526] Mr. Enoch: Well, may I answer that at the conclusion of the cross examination?

Mr. Belnap: I only ask it so I may know what phase of this case has got to be covered by brief. I don't want you to disclose anything to the witness before you answer.

Mr. Enoch: Oh, no, that is not the point at all.

Q. Now, Mr. McClintock, the Continental has been in business a long time, hasn't it?

A. Yes, sir.

Q. And the Norris Grain Company?

A. A very long time.

Q. How did it get along in the merchandising of grain prior to the receipts of corn—will you strike that, please? How did they get along in the merchandising of corn prior to the receipts of that grain by barge from Illinois River points?

A. Will you read the question?

(Question read.)

A. My answer to that, Mr. Enoch, would be that they did then just as they are endeavoring to do now, is to take every advantage that the Chicago market offers as a gateway to market corn and any limitations that they were confronted with would be the same then as it is now, the question of rate structure out of the market.

Q. Were they subject to any limitations that other competitors of theirs located at Chicago were not subject to, [fol. 2527] generally speaking?

A. I wouldn't say so.

Q. Now, if you get away from this water borne corn and this truck corn and take the situation prior to the time those influences were prevalent, all of these merchandisers located at Chicago were on a parity, were they not, so far as the general domestic consuming territories are concerned?

A. Yes, I would say so.

Q. Does the Continental make a greater profit per bushel in merchandising corn received from Illinois River points by barge than it does on corn received by rail?

A. No, sir. I think I stated that we based the price that we paid for the river corn on the Chicago value of the grain. I went into that and explained that on our bids to people like the Allied that we based the price we paid them on the value of other corn in Chicago.

Q. I want to be sure that you understood my question. Now, I am talking about the price,—about the profit in the merchandising of corn and I want to know if you make a greater profit?

A. Well, the profit from merchandising corn is based on the differences you can obtain between your buying price and selling price and we have made no distinction as to the value of barge grain as relates to the value of other grain carrying the same transit privileges.

Q. Well, as I understood your answer it was "No", that [fol. 2528] you do not make any greater profit per bushel in handling barge grain than you do rail grain?

A. That is correct.

Q. Now, why do you engage in this business of handling all of this tremendous amount of corn from Illinois River points exbarge to Chicago?

A. Well, I think that is all in the evidence here. We could rely on our competitors, the testimony of our competitors. We look upon it as a means of increasing the volume of corn into Chicago. If you wanted to go into quite a lengthy discussion of that, which I hope we can avoid, if you look upon the record of Chicago receipts in the past ten years compared to the previous ten years you will see that there has been a general decline in the grain that has come to this market and it was to overcome that situation in whatever degree possible by using any method that might tend to increase volume into this market and through this market and I think the records definitely disclose that they have been a factor in increasing the volume of this corn. That is substantiated by the testimony of the gentleman from Indianapolis and Decatur, where they stated that they were formerly able to participate in acquiring corn at other markets but since the situation that now exists they were no longer able to, so it just seems to me that it is all very plain that it is a means of increasing the volume of corn to this market and that is what we are interested in.

[fol. 2529] Q. How about 1929 compared with 1939?

A. Well, I haven't got any definite figures in my mind and one year would not be a fair comparison because there are crop situations that would affect that condition one year compared with another but the average situation is the one that concerns us.

Q. All right. Now, take the ten year period 1920 to 1930 versus the period from 1930 to date: Do you think on the average you are getting more corn in the latter period than you did in the former? I am talking about receipts.

A. I would say we are not getting as much. I do not pretend that this river business has overcome the loss that we have sustained here in the last ten years, I make no contention of that, but that don't keep us from trying to get back as close to that level as possible.

Q. Well, is your point that—take the five year period prior to 1935 and compare that annual average with the annual average in the subsequent period,—that the lat-er will be greater than the former?

A. The years from 1930 to 1935 compared to 1935 to 1940?

Q. Yes, would be less in the former period than in the lat-er?

A. Not within those two periods. In each of those two periods we had a drought condition. Now, as a matter of fact, the effects of that drought condition both lean toward the last five years because the drought was in 1935 [fol. 2530] but that affected—the drought was in 1934 but that affected the movement into Chicago in 1935, so I would not say again that that was a fair comparison.

Q. Well, how do you arrive at the conclusion?

A. My conclusion is on my own examination of the facts of the past ten years compared with the preceding ten years.

Q. Now, your testimony is that you cannot get enough rail grain in Chicago and in order to pep up your volume you went down the river?

A. That is my testimony and I repeat that it has been the means of increasing our business to Chicago and increasing the volume of the Chicago market.

Q. All right. Now, to the extent that your volume of business has been increased, to the same extent someone's else volume has been reduced and that must be somone else outside of Chicago, is that true?

A. Mr. Enoch, I am here representing the protestants in this case and we are interested in this case as it affects us and our business through Chicago.

Q. Yes, but is my statement correct that to the extent that your business has increased someone's else business would diminish?

A. I wouldn't be in position to say. I don't know.

Q. Well, you don't claim that any more,—speaking solely of domestic corn, domestic consumption,—any more corn was consumed since this river transportation began than prior thereto?

[fol. 2531] A. Well, when you speak of this,—when you confine yourself to domestic consumption that don't answer the question because we are engaged in both the export and domestic picture and so far as the domestic I would not attempt to say that it has necessarily increased or decreased it but I am quite positive that it has been the means of increasing the volume of business that worked through the Chicago market for export.

Q. All right. Now, I understand that you are not certain that the business you do to domestic consuming territories has been increased by reason of this Illinois waterway transportation to Chicago?

A. I am speaking only from the position of the protestants in this case and I am not qualified to answer but it might have affected the total domestic consumption of corn in areas that we operate in.

Q. You cannot say the same thing for the corn which you sold to domestic consumers as you say for the corn you sold in export anyway?

A. That is true and I consider the amount of corn that can be worked for export and the effects thereof so far as the general public and the producer is concerned is a very important consideration.

Q. Now, how sure are you that this water borne grain from the Illinois River points to Chicago had any effect whatever on the amount of corn that you sold in the export market?

[fol. 2532] A. I recited a specific instances in the movement of export business out of here right now. I stated that we would have been unable to participate in that business had we not had the reshipping privilege out of here on barge corn, barge grain.

Q. Well, now, just how sure are you of that?

A. I am sure enough that I am willing to testify to it under oath that that is the case.

Q. I am not questioning your statement so far as the facts are concerned but I am just wondering if in that connection you gave consideration to the influence of your efforts because of your ability to sell this corn at a certain price on the price that your competitor was offering to sell it and whether or not you had given consideration to the fact that if you had not put in such a bid that was lower than his, whether his would have been as low as it was, the one that you had to meet?

A. I never said that we put in a low bid or made a bid based on a low quotation. That is, if you are assuming that, why, I would not be certain of it.

Q. Now, isn't there much more corn moving to New Orleans for export than has come up the river from Illinois points to Chicago that has gone into the export market?

A. You mean at present?

Q. Say in 1939?

A. There has been considerable corn worked through New Orleans for export.

[fol. 2533] Q. Yes. And it has been quite substantial, it has been in substantially greater quantities than the volume of corn that has come up the river from Illinois points to Chicago during 1939?

A. I wouldn't say it has been substantially greater. I doubt whether it has been as great or not.

A. Yes.

Q. That there has not been more than 12 million bushels of corn exported out of New Orleans in 1939, if that is the amount that has come up the river here from Illinois points to Chicago?

A. If the total business that was done through New Orleans is greater than the amount of corn moved in here up the river the answer and the comparison would be obvious. I don't know what the business has been out of New Orleans. I do know, however, that considerable of that business that moved to New Orleans came off the Illinois River.

Q. And it was wholly uninterrupted and would have been in existence even though these proportional rates were not applied on this ex-barge corn out of Chicago that did come up the Illinois River?

A. So far as that particular corn that was shipped via the lower Illinois River is concerned, yes, and it is likely that the volume between New Orleans would have been increased and that we who own elevators on the upper Illinois River, too, have sent out corn to New Orleans instead of bringing it to Chicago and having it available to ship [fol. 2534] out of here by rail this winter.

Q. This 97 million figure, this 97 million bushel figure that you gave in your direct testimony, can you tell me how much of that was corn?

A. No, I can't tell you. It is all grain.

Q. Can you give me an approximation?

A. I would say that a very large per cent of it was corn.

Q. A large per cent of it was corn?

A. A large per cent was corn.

Q. And you cannot,—or can you break that down further by telling me how much of it was export and how much of it domestic?

A. No, I don't think I could right here, right now.

Q. Can you give me an approximation of that?

A. We ship quite a little of this corn to Montreal, some of it to Georgian Bay ports and thence to West St. John and Halifax and some through Buffalo but I wouldn't have the figures in mind but there was a substantial portion that went for export.

Q. Would it be 75-25, export 75?

A. I don't care to make any estimate on it. It was quite substantial. As a matter of fact, I would not be in position to testify so far as the other fellows were concerned. That is business of a private nature that they would not want to be disclosed.

Q. Well, the amount of corn, for instance, that has been exported in 1939, isn't that a matter of public information?

[fol. 2535] A. The matter of export is public business but who exports it is not entirely public.

Q. Your position is that this difference between the present cost of getting Illinois River corn to Cincinnati, Ohio, for instance, between the river-rail cost and the all rail cost is to the benefit not only of the producer but of the consumer?

A. I think I stated yesterday where rates were—so far as rates were concerned that if a producer was located in a section where the contract market such as Chicago affects and is important in fixing the price of his corn at that location, that the adjustment in freight up and down affects the producer when that adjustment is made up to the contract market and if the adjustment is made beyond the market then it affects the consumer.

Q. You don't think the through charge is of significance as far as the consumer is concerned but he is only interested in the charge from the rate break market, for instance?

A. That is quite largely so. You take the export rate, for example, 16 cents out of here: That did not change the farmer's down in the Illinois Valley position very much because he still had a 9½ or a 12 cent I. P. rate into Chicago.

Q. Have you sold more grain in the State of Ohio, for example, since this Illinois River corn came into Chicago than you did prior thereto?

A. No, I don't think so.

Q. Have you sold more in Indiana?

[fol. 2536] A. No, I don't think so.

Q. Or in Pennsylvania?

Mr. Belnap: Mr. Enoch, are you talking of one year's business related to another or one particular area as compared with another?

Mr. Enoch: You heard my question.

Mr. Belnap: You said, "Have you sold more"? In relation to what?

Mr. Enoch: More since Illinois corn began moving up the river than prior thereto.

Q. Pennsylvania?

A. We don't make any contention that ex-water corn, whether it is ex-river or ex-lake, has any advantage into C. F. A. territory. As a matter of fact, it has a disadvantage. It takes the higher application of the reshipping rate.

Q. Have you sold more to New York? I am talking about domestic.

A. I made the general statement that it was our thought that we were able to bring more corn through the Chicago gateway by virtue of having the inbound river movement and the reshipping rate out than we would have handled if we did not have that situation.

Q. Where did you place that excess?

A. Well, it goes to the general consuming territory that we can reach out here. We sold corn in Indiana, we sold corn to the Ohio River and we sold corn to these other des- [fol. 2537] tinations that you talked about but we didn't do it necessarily because we had barge billing.

Q. You do not claim to have increased your volume of domestic business because of the barge billing?

A. Not into those particular territories.

Q. To what territory do you claim that, do you make that claim?

A. Into Trunk Line territory, into New England, and New England is one of the very large consuming areas for grain out of the surplus producing sections.

Q. Who lost that business that you got?

A. I am not sure whether anybody did or not. I couldn't say.

Q. Do you think that this ex-barge Illinois River grain had something to do with increasing the consumption of corn?

A. I believe I stated that so far as domestic business is concerned that I was not on record and did not care to go

on record to the effect that it increased the domestic consumption of corn but it does increase the possibilities of us engaging in that business.

Q. Now, you mean to a greater extent?

A. That is true.

Q. From whom do you take the business?

A. That is what we are here for, to maintain that situation.

Q. From whom do you take the business?

A. I don't know whether we take it from anybody or not.

Q. Don't you have to take it from anybody if the con-
[fol. 2538] sumption is not increased and you increase your volume?

Exam. Taylor: Don't you have to take it from somebody?

By Mr. Enoch:

Q. Don't you have to take it from someone, yes?

A. No. That may be the circumstances, that somebody else would have got the business if we had not gotten it so far as the domestic business is concerned, but who it was and the location it was from——

Q. I did not mean to identify the person.

A. Or the territory, that depends on crop conditions.

Q. Does the grain produced by the Indiana and Ohio farmer get into Eastern Trunk Line and New England territories, do you know?

A. Yes, at times it does.

Q. Were you able to increase your business in Trunk Line and New England territory since the ex-river grain came onto the Chicago market by reason of the fact that you could sell it more cheaply to those consumers in those territories than you did theretofore?

A. We do not base our selling price on what the other fellow is willing to sell for. Our price is based on the cost of our grain plus whatever the transportation cost is into the territory that we are operating in and there is no circumstance in this case that the application of barge grain would permit us to get from Chicago to New England territory any cheaper than we would if the grain had come in by rail.

Q. How did you increase your business if you did not
[fol. 2539] offer it at a lesser price than your competitor was offering it at?

A. If you assume that any of these protestants has to sell cheaper than anyone else to participate in the grain business you are mistaken on that premise.

Q. Don't you?

A. The grain business is not done on that basis.

Q. Don't you sell this Illinois corn more cheaply because——

A. There may be times that we are able to sell the grain into New England cheaper than the dealer in Ohio is able to sell it but it is not by virtue of any fact that is associated with the difference in what the corn may have cost up to Chicago. Ohio and Indiana, you know, are not the large producing sections that we have here in Illinois. Now, that competitive situation exists over there; based on crop conditions being normal that competitive situation so far as Chicago is concerned is quite pronounced during the early part of the season following the harvest of the corn.

Q. Can't you sell ex-river corn more cheaply than a man who is located at Chicago can sell rail corn in Eastern Trunk Line and New England territory?

A. With the inflictions that you have on the inbound billing here, on the rail billing, I would say that that particular shipper is at a disadvantage.

Q. Is that because of the lake local?

A. It is because of the lake local,—it is the infliction of [fol. 2540] the penalty that that lake local billing has on an outbound movement.

Q. All right. Now, suppose the lake local wasn't there, wouldn't you still be in a position to sell corn more cheaply than the Chicago man who purchases rail corn?

A. No, sir.

Q. Don't you buy it more cheaply than he does?

A. No, sir.

Q. You don't?

A. No, sir. I think I told you that a while ago.

Q. Yes. Your contention is that the entire spread between the rail cost and the water cost you give over to the producer?

A. I said that so far as the elevator is concerned that we operated on the river ourselves it was operated on the basis of what Chicago corn it worth — Chicago less the transportation charges and less the amount necessary to operate the elevator at LaSalle, plus an amount that would depre-

ciate that house in a reasonable time and a return on the investment. Now, outside of those factors the producer gets the benefit.

Q. Now, do you pay the producer any more than you have to to make him let go of his corn?

A. We don't know what the producer has to have to make him move his corn.

Q. No, that is not my question. Do you pay him any more than you have to to make him let go of the corn?

[fol. 2541] A. The grain business is handled on a margin where a quarter of a cent a bushel is the difference and I know that we have at times paid in the LaSalle area a cent and three-quarters, two cents, two and a quarter more than he would have obtained on rail corn and we would not have had to pay it merely from a competitive situation.

Q. You are saying now that the entire difference between the rail cost and the water cost goes to the producer, that you make no more in merchandising a bushel of corn that you receive ex-water than you do on that received ex-rail and that you do not reduce the prices in the consuming territory. Now, in those circumstances will you tell me how you are able to increase your volume of sales to Trunk Line and New England territory?

A. It is because of the fact that the territory from which we gather most of the corn along the river that comes into Chicago has these lake local rates. They may be there by virtue of the fact that there is a river movement in operation, I don't know about that, you best know, but it is a fact and that billing I am telling you cannot be used for rail shipments out of here and it cannot be used for delivery on contracts and what else can a man do in the grain business if he cannot do those two things?

Q. All right. Now, you are saying, "Take out the lake local, then everything will be free and you will all be on a competitive basis"?

A. No, not as far as Chicago is concerned because there [fol. 2542] were witnesses in here that testified that the means that we are using to get corn in here into Chicago now kept it away from them.

Q. You mean by that that you won't get as much corn into Chicago?

A. I do. I mean that.

Q. Now, mind you, I am just taking out the lake local now. Do you say that will follow if you take out the lake local?

A. I say that that is what is likely to happen and, as testified by witnesses in here on your side of the case which, of course, does paint a peculiar picture that we would have our own Chicago market interested in conditions that are beneficial to the Indianapolis and Decatur dealer but that is what they testified to and I believe it.

Q. Now, your testimony is that take out the lake local, so far as all of the merchandisers located at Chicago are concerned, not only those that purchase ex-river grain but those that confine their operations to ex-rail grain, they are all on a parity insofar as selling in Trunk Line and New England territories are concerned?

A. These dealers in Chicago but that does not take care of the situation that is competitive with other markets. That is based on volume.

Q. And you would continue to allow the producer the entire difference between the rail cost and the water cost?

A. I would see no particular reason for changing the condition that I just mentioned.

[fol. 2543] Q. Well, would you change it if——

A. Well, your question in effect is that—your inference is that——

Q. I am not making any inference.

A. —we are conducting the elevators down there and just sniping on the rail boys, isn't that it?

Q. No, I am just assuming that you are continuing this business.

A. That is what you think we are doing.

Q. That you are out to make a profit for your stockholders and if you are out to make a profit for your stockholders I don't know what right you have to pay anybody for corn more than he was willing to sell it to you for. That is all I mean.

A. I have no way of determining what that man is willing to sell the corn for.

Q. Mr. McClintock, if you went down and offered him 20 cents a bushel and you kept on raising him up a cent until you get to the point at which he is willing to sell it for that will tell you what he is willing to sell it for.

A. Do you think it is possible to engage in the grain business on that basis?

Q. It is one way of loosening up the corn.

A. It would be a good way to go broke right quick.

Q. I am not saying that you are sniping these fellows at all. I don't want you to draw that conclusion.

A. A comparative case to that would be for the Rock [fol. 2544] Island to find out what it took to move the corn for down there and start in reducing the rates and cutting them down from 26 cents from here to Chicago and finally getting it down to 5.

Q. That wouod be greater worries for us. The cheaper you would get it the more money you would lose.

A. Well, based on that premise you would have to do that.

Q. Is there an elevator operator at Rochelle, Illinois?

A. I would say yes. I don't know.

Q. Do you think he is benefited by this arrangement that is in effect now on the water?

A. Well, if he lives close enough to the river,—I don't have the locations in my mind,—but if he lives close enough to the river to participate in the activity I would say he would benefit.

Q. I understood you to say that all these producers were benefited by this, am I right?

A. All of what producers?

Q. All of the Illinois producers, in answer to Mr. Cole's questions.

A. I answered specific questions when I referred to a particular instance.

Q. But you think the operator at Rochelle, the elevator operator is not hurt?

A. I am sure of it.

Q. And the producers in that territory which he serves, [fol. 2545] they are not hurt either?

A. That is my conviction.

Q. But you have increased your business in the consuming territories in Eastern Trunk Line and New England territories?

A. Mr. Enoch, I think the protestants in this case are capable of merchandising a great deal more corn than is now coming through the Chicago gateway with all the com-

petitive modes of transportation and we can do it without hurting anyone.

Q. What was your testimony on direct about the transfer service performed, if any, by the Continental at the South Chicago elevator?

A. The public tariff is a cent and a quarter a bushel.

Q. Do you engage in that business? Did you in the year 1939, for any outsiders?

A. Well, we have—I wouldn't just be able to say whether we have. I think we have. I think we transferred some wheat that came up from the Southwest that was transferred for shipment out of here.

Q. When was that?

A. Well, it was probably during the season following the movement of new wheat down there. I couldn't tell you exactly.

Q. Do you know whether it happened in 1939?

A. Yes, I am quite positive we did do some business in 1939.

Q. Has there been any wheat come up the river that went onto the Chicago market? Now, if that is not phrased [fol. 2546] right, what I am trying to distinguish between is the wheat that is brought in here as this corn has been brought in that went on the Chicago market or the wheat which came up the Illinois River say from Kansas City or some other point, if there are any other points, and was merely transferred and went on to Buffalo or some other destination.

A. There was wheat that came,—by barge you mean?

Q. Yes.

A. There was wheat that came up here from Kansas City by barge and transferred for reshipment out.

Q. And was all of the wheat that came up the river handled that way?

A. I am not sure whether—are you speaking still of the Kansas City wheat?

Q. Yes.

A. I think perhaps all the wheat that came up here from Kansas City was transferred here and shipped beyond. I think most of that was reshipped out of here by lake. We did not handle any of that particular volume ourselves that came in by barge but I understand most of it went out by lake but some of it did go out by rail.

Q. Yes, for such merchandisers as millers and general mills that owned the wheat bought direct, in their course of transportation through Chicago to Buffalo, for instance.

A. Well, I am not just in position to say whether they [fol. 2547] bought the wheat in Kansas City and undertook to transport it themselves or whether the elevator operator who may have sold the wheat performed that service.

Q. Do you store barge grain in your elevator for any other—any competitor of yours?

A. Barge grain?

Q. Yes.

A. I don't believe we have ever stored any barge grain.

Q. For some competitor?

A. I don't recall that we have ever done that.

Q. Do you know whether Norris & Company does?

A. I don't know whether they have or have not. I know some of the protestants have. I know that the Santa Fe Elevator Company did and I know that they were somewhat affected by the threat of losing this barge reshipping billing out of here.

Q. Is there any merchandiser in Chicago that now engages to any extent in the merchandising of this river grain that does not have facilities along the river?

A. He is in the same position that I would say that the Chicago merchant is when he engages in consuming markets beyond the Buffalo or Georgian Bay ports. We then use the public elevator facilities or the elevator facilities at those points to make our transfer from water to rail and there is that possibility here in Chicago where the dealer in some inland town down here, if he wanted to, or some [fol. 2548] individual in this market that wanted to engage in the handling of that business could go down here on the river and accumulate that corn, buy it competitively from the same people that we do and the public facilities here are available to him for the transfers.

Mr. Enoch: May I have the question read to Mr. McClintock?

Exam. Taylor: Yes.

(Question read.)

The Witness: Well, I wouldn't say that there is anyone that engages in it extensively. However, the possibility for him to do so exists.

By Mr. Enoch:

Q. Well, can he do it and compete with you, for instance, or anybody situated as the Continental is?

A. Well, the only expense that he is placed to is the elevation charge for the transfer of that grain and I think there has been some experience in the Chicago market recently where it would have been cheaper to have paid that transfer than try to operate the elevator.

Q. Well, I say do any merchandisers here in Chicago engage in the merchandising of this ex-river grain that do not have facilities along the river?

Mr. Belnap: Mr. Enoch by that do you mean does any elevator company in Chicago buy that grain who does not have elevators which they operate themselves on the river banks?

Mr. Enoch: Can you answer that question?

Mr. Belnap: Is that what you have asked him?

[fol. 2549] Mr. Enoch: No, that is not exactly it.

Q. Answer Mr. Belnap's question, please.

A. If you mean extensively I would say no, they do not.

Q. Now, a man located in Indianapolis, Toledo or on the Ohio River, he is in the same situation, isn't he?

A. He is in the same situation that I agree that the facilities are here available for him, public facilities and if there is an advantage that Mr. Bradford and some others have stated that there was here, he has only got to add a cent and a quarter a bushel to that advantage and he can move his grain right from the river right up to Chicago, right down to his place of business and the only thing that he will have to absorb above the transportation costs is a cent and a quarter elevation and the inspection and weighing charge.

Q. Why doesn't he take advantage of that?

A. Well, he does buy grain out of here. Now, it is a question—you know, this cent and a quarter that we charge for elevation is a profit in the grain business. Now, maybe he can buy the grain from us or from Norris or from some of these other competitors in here at a price level that repre-

sents that cent and a quarter and maybe since he feels he is removed from the market he would prefer to do that.

Q. And compete with you. You are in position to sell grain to the same fellow that he is going to?

A. Oh, well, there is a lot of people that buy grain that [fol. 2550] don't sell it. We are not in the manufacturing business. You know, the largest consumers of grain so far as grain merchants in Chicago are concerned is the fellow that buys that grain and makes it into a manufactured product.

Q. Let me ask you this: Do the grain merchants in Indianapolis, Louisville, Cincinnati and similar points take advantage of this situation to which you refer in Chicago and avail themselves of ex-river grain?

A. They have not so far as I know.

By Exam. Taylor:

Q. Well, isn't your house a public house?

A. Yes, sir.

Q. If they bought the grain, if Mr. Bradford's people in Indianapolis bought the grain on the river and shipped it up to your house, paid the transportation charges up there, you would store it for them?

A. Absolutely.

Q. And you would charge them a cent and a quarter?

A. That is right.

Q. Now, if they could buy from you without paying that, without being charged that cent and a quarter or from somebody else without being charged that cent and a quarter it would be foolish, wouldn't it?

A. That is correct.

Q. Because you have already stated that sometimes a quarter of a cent a bushel will make the trade?

[fol. 2551] A. That is correct, but, Mr. Examiner, just to make clear the position of Mr. Bradford here that the Indianapolis man was prejudiced under this present condition, we say that he could not possibly be hurt more than the cent and a quarter a bushel elevation cost because he can use the same channels of transportation that we can use by paying the transfer fee here.

By Mr. Enoch:

Q. Who are the two largest merchandisers of this ex-river grain?

A. I don't have any figures that would determine that.

Q. Let me ask you this: Do Continental and Norris Grain Company handle by far the larger proportion of the ex-river grain?

A. I don't have any figures on what any individual of these protestants may have handled. I know that we handle considerable and I know Norris did. I know that Cargill bought considerable grain on the river and I explained that Rosenbaum Bros.' house that had the marine leg was disabled through the fire and that they were not in operation during most of the summer season and probably did not participate in the business to the extent they otherwise would. I know that they——

Q. Did they participate in it to any extent?

A. This year, just based on those——

Exam. Taylor: This year? 1939?

The Witness: 1939, that they did not engage in it very extensively. Whether they engaged in it at all I am not able to say.

[fol. 2552] By Mr. Enoch:

Q. Did Cargill have any ex-river corn in 1939 from Illinois River points now, I mean LaSalle?

A. Well, he didn't have any from LaSalle but it is my understanding that he had some from Peru. I think it was testified to here and I think it is in the evidence that some corn loaded over in Peru went to Cargill's elevator and I happen to know through information that I had in trade connections that Cargill bought quite considerable corn along the Illinois River.

Q. Now, what do you mean, in 1939?

A. In 1939.

Q. How much? When you say "quite considerable" what figure are we to understand you intend to convey there?

A. It would only be an estimate. Why make a guess on something that I have no definite knowledge of at all? I don't know.

Q. You mentioned Dewey Grain Company doing business on the river. Isn't it a fact that they sell to you or to the Norris Grain Company at the river landing?

A. I think maybe the trade might be made both ways. It might be made f.o.b. the locations where the grain was delivered or it might be all delivered. I know the grain

that we bought, especially where it came via the Hennepin Canal, it was all delivered at Chicago, c.i.f. Chicago. He furnished his own transportation. That is, he furnished his own means of transportation.

Q. How about the Terminal Grain Company that you mentioned?

[fol. 2553] A. The Terminal Grain Company? I just don't recall it. I think it was either all bought on a Chicago basis or part of it on an f. o. b. basis less these charges, whatever it involved.

Q. You mentioned the Barry Transportation Company. You didn't have any transportation of corn by the Barry Transportation Company in 1939 from Illinois?

A. I don't believe we did.

Q. Haven't you used Mechling exclusively in 1939?

A. No.

Q. John I. Hay?

A. Hay hauled most of the corn that we ourselves bought at our own locations so far as the Chicago movement is concerned.

Q. Yes, that is what I am talking about.

A. Yes.

Q. You think Hay brought it?

A. Yes, quite a little of it. I am talking about corn now that originated at our stations that we own and operate ourselves.

Q. Yes. Isn't it true that the criticism you make of this rate adjustment out of Chicago, namely, a local rate and a proportional rate, so far as its being—strike that out. Isn't it true that this criticism you make of the proposal as being a penalty against ex-river grain is to the same extent and in the same degree a penalty against truck grain coming to Chicago?

A. I don't believe I ever testified anything regarding truck grain.

[fol. 2554] Q. Well, let me ask you about the truck movement. Do you think truck grain ought to have the same rate of—strike that out. Do you think truck grain ought to have the same rate out of Chicago that ex-river grain has?

A. I have never given it much thought. So far as rate making is concerned I recognize there is a justification in rate differentials similar to the degree of the service performed. If the time ever comes when the volume of grain coming into Chicago by truck is of any clarge proportion

that the railroads might want to give consideration to a rate to carry it out of here, it can be considered then. Now, I am not attempting to answer whether it should have or should not have. Mr. E. R. Bacon here and Rosenbaum Bros., I believe, are the elevators that are participating in that business more than any others and they are both protestants in this case, not founded on the basis that it affects their truck business at all.

Q. Well, you have made out the best case that you could make out here for the application of the proportional rate on ex-river grain. Now, couldn't you make out and with equal enthusiasm the same identical case if the question were up as to whether or not the proportional rates should be applied on truck grain?

A. Not very this late in the day. It is not a question that I would care to make an answer on.

Exam. Taylor: Mr. Enoch, what was that 85 per cent figure you read out of an exhibit over there moved by Mechling?

[fol. 2555] Mr. Enoch: That was not an exhibit. That was off the record, too, Mr. Taylor. That was not an exhibit, the figure I have.

Exam. Taylor: What was said about that? Maybe it ought to be on the record.

The Witness: It has no relation to this.

Mr. Enoch: 85 per cent of the corn came in—this is not an exhibit—came in from,—this is Illinois corn that was handled by the Allied Barge and the Mechling Transportation Company.

Exam. Taylor: It is not an exhibit?

Mr. Enoch: No.

Exam. Taylor: Are you going to put it in?

Mr. Enoch: I can put it in.

Exam. Taylor: Have you seen that?

Mr. Belnap: Sure.

Exam. Taylor: Would you like to read it in the record?

Mr. Enoch: Yes, I would. Have you any objection?

Mr. Belnap: Why don't you wait, Mr. Enoch? You have some other matters to put in and I will then be willing to accept Mr. Enoch's statement as a statement of fact.

The Witness: Just a minute.

Exam. Taylor: This is off the record.

(Discussion outside the record.)

Exam. Taylor: Let us take a short recess while you all [fol. 2556] agree on that.

(Whereupon a short recess was had.)

Exam. Taylor: Proceed.

By Mr. Enoch:

Q. Mr. McClintock, what would you say to the cancellation of the eastbound local rate and making the present proportional rate applicable on ex-river grain the local rate?

A. You mean make the proportional on rail shipments, too, on the basis of the local rate?

Q. Take this one rate out of Chicago to New York, Baltimore, Cincinnati, Detroit. Have just one rate out of Chicago, I mean.

A. It would depend on the level of the rate and how it compared with other gateways.

Q. Well, take the present rate.

Mr. Belnap: Now, Mr. Examiner, I haven't asked this witness anything about rate construction, simply the way rates have operated on merchandising.

Mr. Enoch: From a merchandising standpoint.

Mr. Belnap: Now, if the witness can answer from a merchandising standpoint how a given rate will operate, that, of course, is what I talked to him about.

The Witness: Well, he will first have to state the rate.

By Mr. Enoch:

Q. Make the present proportional rate the local rate.

Mr. Belnap: Give him a figure.

The Witness: Well, I would say that if the present pro- [fol. 2557] portional rate could be used as the local rate that it would be quite satisfactory so long as that relation maintained with other gateways, that there were no advantage through the other gateways.

Mr. Brown: What would you say with respect to the rate adjustment from the country points, which is where you start with your competition?

The Witness: I answered that question on the assumption that present rates inbound would remain in effect.

Mr. Enoch: That is all I have.

Exam. Taylor: Are you going to put that other exhibit in later?

Mr. Belnap: He is going to make a statement of fact as counsel.

Mr. Enoch: Do you want it in now?

Mr. Belnap: Wait until we get Mr. McClintock off the stand.

Exam. Taylor: Mr. Brown?

Mr. Brown: No questions.

Exam. Taylor: I have a few before redirect.

Q. Mr. McClintock, is this true, that grain moving on local rates is discounted in price to the extent of the difference between the lake locals and the I. P. rates?

A. Now?

Q. Yes.

A. It is not.

[fol. 2558] Q. Would it be under the proposal?

A. It is my opinion that that is the condition that would develop because the volume of grain that now comes in here by river would be forced out through the avenue, which would be the lake, that is now employed to use as an escape for the whole lake local billing.

Q. Then if that transpired how would you buy that grain? Would it be discounted?

A. There are two modes in buying in which that purpose would be accomplished. If the lake local rates still remained in effect and we bought it at a discount then we would have to go through the trouble of asking the seller who might be offering us grain—the receiver who might be offering us grain, we would have to go to the trouble of ascertaining the exact station from which that particular car arrived so that we could determine what that differential was. There is a variable differential in these lake local rates.

Q. It would range from two to——

A. From a half a cent a hundred to five cents a hundred.

Q. Yes.

A. Now, naturally, in that case your discounts would vary, but what we would more probably do, instead of making them a bid on the lake local we would make our bid predicated on the shipper absorbing the I. P. rate and we would bid on an I. P. basis.

Mr. Brown: But the effect would be the same.

[fol. 2559] The Witness: The effect would be exactly the

same, only it would simplify the tranaction by disregarding that there was lake local.

By Exam. Taylor:

Q. Then you would have the discount in your price, wouldn't you?

A. That would be the—we would have the discount in the price when we bought it on the lake local billing at a price representing the freight differential between the two classes of rates.

Q. Now, I believe you mentioned the fact that you had just completed an elevator at Seneca on the river?

A. Along during October, this elevator that is covered by this contract here.

Q. Oh, is that this contract Mr. Enoch was talking about?

A. That is right and that is the elevator we built and sold under contract to the Allied Grain Corporation. We at the same time built this elevator at LaSalle and it was completed and started into operation about the first of October of 1939.

Q. That is at LaSalle?

A. At LaSalle.

Q. But is there any such contract in connection with that?

A. No. We own that house outright.

Q. Are there any other contracts of a similar nature between your company and any down the river elevator people?

A. No.

[fol. 2560] Q. Now, there is just one further question or possibly two that I would like to ask. Does Continental Grain Company own or have any interest in any elevator located at Buffalo or adjacent lower lake port?

A. The Continental Grain Company has no interest in any elevator at any of the l--ger lake ports. When those gateways are utilized we utilize them as through the facilities offered as a public operation. We operate an elevator at Toledo under lease but it is not on the water.

Q. I see. Well, does the Continental own or have any interest in any transportation facility over the Great Lakes?

A. No, they do not.

Exam. Taylor: Redirect?

The Witness: Or into the Chicago market, we have no interest in any of the barge lines.

Exam. Taylor: Well, I meant over the Great Lakes generally.

The Witness: No, we do not.

Exam. Taylor: Redirect. Oh, just before you do that, Mr. Enoch's statement as to the contract, which you agreed upon as to the terms, makes unnecessary your request that the contract be read into the record as a whole. That is correct?

Mr. Enoch: Yes, that is correct.

Mr. Belnap: Mr. Enoch was going to tell me something at the conclusion of his cross-examination.

[fol. 2561] Mr. Enoch: Mr. Belnap, I did not know about the existence of that contract until it came out in the testimony of one of the prior witnesses here and after such description was given of that contract as shown by the record my only interest in it was to find out whether or not there was any provision in there by which on the compliance with the terms of which there was any possibility of beating the application of lawful rates.

Mr. Belnap: Did you read from a copy that you had and ask Mr. McClintock about that provision there for the purpose of assuring yourself that there was no such provision?

Mr. Enoch: I haven't come to any conclusion about it.

Mr. Belnap: I am still in the dark, Mr. Examiner. As I now understand Mr. Enoch's purpose was to discover whether the contractual provisions provided a method for defeating the lawfully established rates. That was the only purpose for which you were interested in the contract, is that right?

Mr. Enoch: That is right.

Mr. Belnap: And you haven't made a sufficient study of the contract and the law to come to any conclusion about it?

Mr. Enoch: That is right.

Mr. Belnap: I only ask so that I might know about the issues of the case.

Mr. Enoch: Well, now that we are on that very subject perhaps you will tell me whether or not you differ with some of the other witnesses on whether or not this grain is [fol. 2562] located in these elevators in Chicago is between the time when it is unloaded out of a barge and just before it is re-loaded for outbound transportation in transit?

Mr. Belnap: It is in transit in the sense that it must comply with the terms of the transit tariff in order to obtain

the benefit of the outbound reshipping proportional rates. It certainly is not in transit in the sense that it is an uninterrupted through journey under rates from the first origin to final destination subject to the Commission's jurisdiction.

Mr. Enoch: In other words, it has not moved over a through route from Morris or Dwight through Chicago to final destination?

Mr. Belnap: Subject to the Commission's jurisdiction it has not.

Exam. Taylor: That is merely a statement of position.

Mr. Enoch: Yes.

Mr. Belnap: I also think it is the fact, Mr. Examiner.

Exam. Taylor: Well, it is your contention. Proceed now with your redirect.

Mr. Belnap: I think I just have one question—one subject.

Redirect examination.

By Mr. Belnap:

Q. You were asked about the escapes for corn which has been delivered in Chicago on the basis of the lake locals, particularly as to movement beyond on transit balances [fol. 2563] of through rates. Take the situation, Mr. McClintock, where the through rate is exactly the equivalent of the I. P. to Chicago plus the then reshipping rate beyond, in that case if the grain moved in on an I. P. rating the transit balance would be precisely the same as the reshipping rate, would it not?

A. Where the factors that—where the through rate was made up on factors of the reshipping plus inbound?

Q. Yes.

A. Then the transit balance in that case would be the same as the reshipping.

Q. Precisely.

A. That is true.

Q. Now, the lake locals are always less than the inbound I. P., are they not?

A. Yes.

Q. So as to any grain which would come in on a lake local the transit balance under the through rate in the situation I have given you would always be in excess of the reshipping rate?

A. Now, let's see if I follow you on that; the transit rate would be less than the reshipping rate, is that the way you stated it?

Q. No. I say the transit balance would be in excess of the reshipping rate. Let us take some figures. Let us take a point that has got a 12 cent I P. to Chicago, the reshipping rate is 15 cents and the single factor through rate is 27 cents. Now, if the grain moved in on the 12 cents rate the [fol. 2564] transit balance would be——

A. The same.

Q. —15 cents and the reshipping rate would be 15 cents?

A. That is quite true.

Q. Now, let us say we have a lake local rate of possibly 8 cents: It is always less than the 12, is it not?

A. It would be higher outbound corresponding to the difference inbound between the lake local——

Q. By "higher" you mean that the transit balance would be higher than the reshipping?

A. The transit balance would be higher than the reshipping rate to the destination to the extent that it was cheaper inbound as between the lake local and the I. P.

Q. And that could be applied to all situations of a similar character, could it not?

A. That is true.

Q. Now, in the case where the joint through rate is less than the combination of the interstate factors to and from Chicago you then, as you do at Battle Creek, obtain a transit balance less than the reshipping rate?

A. That is true.

Q. But isn't it also true that the transit balance you then obtain is higher than the transit balance using the interstate factor to Chicago by the precise difference between that interstate factor and the lake local?

[fol. 2565] A. It is higher to the same relation that exists between the lake local and the I. P. into Chicago.

Q. To the extent of the difference——

A. In other words, in simplification there, it matters not whether we go out on that transit balance or whether we pay the inbound carrier the I. P. basis and go out on the reshipping difference. The result is precisely the same.

Q. And it is that difference that you referred to as the blight against the lake local billing?

A. Absolutely.

Q. Now, taking the——

Mr. Brown: Why don't you finish that? Suppose the local rate from Chicago to that destination is only 3 cents above the reshipping rate and the balance inbound as between the I. P. and the lake local is 4 cents what would he do?

The Witness: Will you state that again, Mr. Brown?

Mr. Brown: Suppose the local rate is only 3 cents higher from Chicago than the reshipping rate to this eastern C.F.A. destination what would you do with the lake local then, where the rate inbound 4 cents—where the rate inbound was 4? You would not pay more than that local rate, would you?

The Witness: No.

By Mr. Belnap:

Q. So far as grain sold for city consumption is concerned, as shown on this exhibit, does that mean that the grain is actually consumed in the sense of being either [fol. 2566] fed to animals or eaten by humans in Chicago?

A. No. That corn or that grain, if you are speaking of corn——

Q. Yes, corn.

A. —is quite largely used by industries such as the Corn Products, American Maize and other similar industries and feed manufacturers and is employed for conversion into such products as those manufacturers might be making.

Q. Those products are grain products of which a great volume is moved beyond Chicago, is that correct?

A. That is my understanding, that a large percentage of the business is moved beyond Chicago for consumption.

Q. When you sell corn to a local processor you transfer to them the inbound billing?

A. Well, I think it might be mentioned here that most of this corn that is consumed by these local industries is not bought from Chicago elevators. It is bought in competition with the Chicago elevators in the spot market and to arrive, just the same as we do. So far as acquiring their supplies are concerned they engage in the same mannerism of bidding that the elevators do. Now, we do sometimes well grain out of our elevators to these local industries but it is not practical for them to depend on Chicago elevators as their source of supply on account of there is a cross-town switch involved which naturally adds to the cost of their grain.

Q. When you do sell do you transfer to the local processor [fol. 2567] the inbound billing?

A. No. Ordinarily we sell them on the kind of billing that we are going to furnish as agreed upon at the time of sale.

Q. Whatever it is you transfer to them inbound billing?

A. We transfer the title of that billing to them and it is then in their possession, if it is going to Corn Products, and the title is registered in the name of the Corn Products.

Q. And there are the same problems as to having billing that will go beyond, different perhaps in degree, as you have in connection with the shipment of grain?

A. That is true.

Mr. Belnap: That is all.

Exam. Taylor: Mr. Macaulay?

By Mr. Maculay:

Q. You made a statement as to what you thought would be the condition in the event that reshipping rates are taken away from barge grain. Did you state that with relation to your operation at LaSalle or with relation to all river elevators?

A. Well, I had in mind when I made the answer as to the effect it would have on elevators operated or owned by the Chicago protestants. I probably had in mind more than anything else the elevators operated by the Continental Grain Company and my answer was predicated on that feature. Now, what might happen to the independent elevators operated independent of Chicago connections I could not say definitely what would become of them, of [fol. 2568] course. It was my assumption that whatever suffering took place that they would suffer in the same degree, or in a greater degree than the Chicago elevator operator because if it comes to a question and you are limited as to the amount of volume that you can handle I think it would be human nature to look out for your own elevator first and to that extent I think the elevators operated by the Allied and Mr. Finnegan would probably suffer to a greater degree than elevators operated by the Chicago protestants.

Q. One more question: In exhibits 19 and 38 furnished by the Board of Trade there is a considerable movement of wheat, a considerable amount of wheat movement to Chi-

cago via the Illinois waterways. Do you know whether or not all of that wheat came from Kansas City?

A. Well, there was a little wheat originated on the Illinois River that came into Chicago. My recollection is the most of it did come from Kansas City, practically all of it.

Q. Some did come from other points on the Illinois waterway?

A. Yes, some. There is very little wheat produced up in the upper regions of the Illinois River, such as La Salle. You don't get into the wheat territory until you get into Peoria and farther down the river.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: That is all.

Exam. Taylor: Anything on recross?

[fol. 2569] Recross examination.

By Mr. Cole:

Q. Mr. McClintock, going back to this grain that gets into Chicago on the lake local or from the lake local territory that is able to move out on a transit balance, there are times, are there not, and situations where the arrival of that grain in Chicago, considering the amount of money which was paid by the seller, has been such that that billing does enable you to go out on a transit balance which is then less than the proportional rate to your destination?

A. I think that is in evidence here.

Q. Well, anything you just recently answered to Mr. Belnap did not change that prior statement, did it, or the effect of it or the results of it?

A. I don't recall that I answered him anything different, that I answered him in any different manner than that.

Q. Now, on your exhibit number 82 there is shown quite a volume of corn which each year is city consumption and unaccounted for. When that grain moves and there is surrendered on that outbound movement, whether it is corn or whether it is products of corn, and there is surrendered on that any billing showing the inbound grain that matched up against that, would that grain be in a group which was known as city consumption and unaccounted for or would it be in here showing the disposition of it?

A. If it moved out as grain? Now, let's see if I get you. Off the record.

[fol. 2570] Mr. Cole: Yes, off the record, if you want to, to get ourselves straightened out.

(Discussion outside the record.)

Mr. Cole: That is all I have. Thank you.

Mr. Belnap: No further questions.

Exam. Taylor: Is that all from this witness? Witness excused.

(Witness excused.)

COLLOQUY

Exam. Taylor: Now, Mr. Enoch, have you got a statement to make?

Mr. Belnap: I might state before Mr. Enoch starts by saying that he can state certain information in the record without being called as a witness. We can have the statement of counsel that it is a fact and I will be glad to agree to that.

Exam. Taylor: State in the record what the information is.

Mr. Enoch: This is Illinois corn moving to Chicago, Illinois via barge lines and recorded for transit privileges during the year 1939. I might say that all of these figures are compiled from the documents that are surrendered at Chicago to support the outbound movement of this barge grain.

Exam. Taylor: Recorded with the Central Inspection Bureau?

Mr. Enoch: Yes.

Barge Line.	*Weight in Pounds.*	*No. of Trips.*
Allied Barge Corp.	244,060,544	174
John I. Hay Co.	77,328,450	39

[fol. 2571]

Lawrence Transportation Co.	3,294,850	7
Myers Transportation Co.	459,810	1
A. L. Mechling Barge Line	407,576,180	371
Waterways Transportation, Inc.	598,070	1
Totals	733,317,914	593

Number of cars based on an average weight of 95,000 pounds per car, 7,719 cars and the total number of bushels represented by the total weight in pounds are 13,094,962.

Mr. Belnap: That is a calculation based on the pounds you have read into the record?

Mr. Enoch: That is right, 56 pounds to the bushel. Now, Mr. Belnap's remarks just prior to my reading these figures also included, as I understand it, two letters which I have from the Illinois Commerce Commission inquiring as to certain facts insofar as the records of the Illinois Commerce Commission are concerned relating to the barge lines that are shown in the statement which has just been read. I understand that I am permitted to read these two letters into the record. This is a letter directed to me, dated January 13, 1940 from Joseph E. Knight, Secretary, Illinois Commerce Commission, Springfield, Illinois:

"DEAR SIR:

In reply to your letter of the 6th relative to your inquiry about the A. L. Mechling Barge Line and others we would [fol. 2572] advise that there have been no applications filed with the Commission in these cases.

Also, our records further show that no rates, charges, rules or regulations have been filed with our rate section, no stocks or bonds approved and no reports filed in accounting section."

Another letter from and to the same people dated Springfield, Illinois, dated January 17, 1940, reads as follows, the writer being Secretary of the Illinois Commerce Commission:

"In reply to your letter of the 6th instant relative to your inquiry about Lawrence Transportation Company; Myers Transportation Company; and Waterways Transportation Company, Inc., we would advise there have been no applications filed with the Commission by these companies.

Also, our records further show that no rates, charges, rules or regulations have been filed with our rate section, no stocks or bonds approved and no reports filed in our accounting section by the three above named companies."

I might say that my letter originally mentioned in addition to the A. L. Mechling Barge Line the John I. Hay Com-

pany and Central Barge Company. Now, if there is any doubt about whether the Interstate Commerce Commission takes judicial notice of the statutes of the State of Illinois I want to introduce the Illinois Public Utilities act.

Mr. Belnap: I will agree that the Commission may take [fol. 2573] judicial notice of the statutes, so far as I am concerned.

Exam. Taylor: That is sufficient.

Mr. Enoch: That is all I have.

Exam. Taylor: Now, Mr. Belnap, did you have the tariff references yet?

Mr. Belnap: Yes. May that statement be indexed as a statement of the counsel, Mr. Enoch, so that we can identify it as a statement of facts?

Exam. Taylor: Yes.

Mr. Belnap: Mr. Examiner, I would like to supply some tariff information for the record with the I. C. C. citations and in some cases to read into the record tariff items and have them presented the same way as a statement of counsel which may be accepted as a statement of fact in the case.

Exam. Taylor: Proceed.

Mr. Belnap: If there is no objection to that.

Exam. Taylor: I hear no objection.

Mr. Belnap: The Western Transit Tariff number to which Mr. Rich referred on his direct examination is L. E. Kipp's 331-F, I. C. C. No. A-3102 effective 12/1/39.

Exam. Taylor: Proceed.

Mr. Belnap: Now, Mr. Examiner, when Mr. Garrison was testifying he, speaking from recollection, stated that Rule 5 would be incorporated in Agent Jones' Freight tariff No. 535, I. C. C. No. 2790, effective June 28, 1935—or, [fol. 2574] rather, as it was incorporated in that tariff was a reproduction simply of a note which had been in a great many carriers' tariffs prior to that date. Since that testimony was given I have examined some of the prior issues of the individual lines and I find that his statement that was based on recollection was not entirely correct. For example, the Michigan Central had individual issues prior to the Jones' tariff. You will recall that Rule 5 in the Jones' tariff had two paragraphs, the first making an affirmative provision and the second paragraph excepting certain traffic from that affirmative provision. It would be just

as easy if I made reference to them as the first and second paragraph. The Michigan Central tariff that contained——

Mr. Day: What is that tariff?

Mr. Belnap: It is I. C. C. 5882, did contain for a period running back, how far I do not know, the first paragraph.

Exam. Taylor: What is the effective date of that tariff?

Mr. Belnap: I am going to put it in, when the change came in. However, it was not until Supplement No. 22, effective March 15, 1933, that the exception was placed in the tariff.

Mr. Day: What is that supplement again?

Mr. Belnap: 22 to I. C. C. 5882, the citation then reading:

"The foregoing will not apply in connection with any rates carrying provision that such rates are applicable on ex-river or ex-lake traffic (Inf. 14388.)" I understand that has reference to a C.F.A. information circular dealing with [fol. 2575] rules that are put in tariffs. For the Pennsylvania Railroad it was not until March 1st, 1933 in its tariff 73-A, I. C. C. 573, Supplement 33 thereto, that any rule at all similar to the Rule 5 in the Jones' tariff was made a part of their rate tariff. They published both paragraphs at that time.

Exam. Taylor: What is the I. C. C. number of that tariff?

Mr. Belnap: I. C. C. 573. The New York Central tariff which carried the proportional reshipping rates prior to the time they were taken over by the Jones' tariff was its tariff No. 643-A, I. C. C.-L. S. No. 1470. I have before me Supplement 127 of that tariff which was issued on June 28, 1935, effective July 31, 1935. That is after the period the Jones' tariff took out of the tariff the proportional rates but I find on page 7 thereof the rule regarding the application of proportional rates which refers to the same C.F.A. information circular but happens to carry only the first paragraph and not the second paragraph. A search has been made of the New York Central tariffs, individual issues carrying these proportional reshipping rates prior to the date of the agency issue and we have been unable to discover where they had at any time the exception of the character finally published in the Jones' tariff.

Exam. Taylor: It had the first paragraph?

Mr. Belnap: The first paragraph only but not the exception. For the C. & O. in its tariff I. C. C. No. 11656, effective April 15, 1937, has the provision regarding the application

[fol. 2576] of proportional rates, the first paragraph of which was taken from prior issues but the second paragraph, the one which bears, "The foregoing not to affect," and so forth, was added at that time. When the agency issue was——

Mr. Day: That was effective April 15, 1937?

Mr. Belnap: That is the supplement I am reading from. It shows it carried from a—that is from Supplement 36 of that tariff.

Mr. Day: Off the record.

(Discussion outside the record.)

Mr. Belnap: I took what I said as to what is in the tariff from the supplement I referred to, which was effective on April 15, 1937. The note in question carries a reference mark "9", which shows that the preceding change, that is, the time when the second paragraph was added, was February 28, 1935. That was in Supplement 9 to the tariff. I would like to read in the record, Mr. Examiner, the note with which we are concerned as taken from Freight Tariff No. 535, Jones' I. C. C. No. 27900, effective on June 28, 1935. On page 100 of the tariff is found a provision which is given in a note or rule numbering headed, "Application of proportional rates." "Proportional rates, as named herein, which by their terms are limited in their application to traffic originating at, specified points or territories, including rates which are published for application on traffic "from beyond", or "when destined beyond", are applicable only [fol. 2577] when the entire through movement is performed by rail carriers or water-and-rail carriers, under rates lawfully on file with the Interstate Commerce Commission; the foregoing not to affect any rates now published carrying provisions that such rates are applicable on ex-river or ex-lake traffic." Now, Item 5 in the present agency tariff has already been read into the record.

Exam. Taylor: Yes.

Mr. Belnap: I only call attention to the fact that since the first publication of that rule the words, "Ex-ocean" have been added in the second paragraph thereof.

Exam. Taylor: When was that done?

Mr. Belnap: I haven't the tariff reference for that. It shows in parentheses in connection with this publication "C.F.A. Information 21, Line 11," but I do not know the

date. Now, Mr. Examiner, no mention has been made on the record of the fact that a somewhat similar rule is carried in the Jones' 245 Series, the present issue being I. C. C. No. 3356.

Mr. Brown: That is in.

Mr. Belnap: Did Mr. Brown put it in?

Mr. Brown: Yes.

Mr. Belnap: Perhaps so. Anyway, I have examined the earlier issues of that tariff to find when the rule was first made effective. In Supplement No. 6 to the tariff, effective February 7, 1935, on page 2 was published the first para-
[fol. 2578] graph to become effective January 15, 1935. The effective date was the effective date of the supplement except as otherwise noted therein and the first paragraph carried a special provision making it effective on that earlier date. Then the publishing agent came along in Supplement No. 67, effective on February 15, 1935 and under special permission No. 141560 of February 9, 1935, on two days' notice added the second paragraph to the rule, the one reading, "The foregoing not to affect", but effective on January 15, 1935, the same date. Now, the present exception is different from the one as originally established only that in the second paragraph it has as the last phrase, "or on traffic forwarded via ocean from the port."

Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Belnap: I would like to offer exhibit 82 into the record.

Exam. Taylor: It will be received.

(Exhibit 82, Witness McClintock, received in evidence.)

Mr. Belnap: Now, I have a request to make that is in the nature of a statement of facts that I want to appear in the record.

Mr. Enoch: I would like to have a copy of the Illinois Public Utilities act identified as exhibit number 83 and received.

Exam. Taylor: Exhibit 83 is received.

[fol. 2579] (Exhibit 83 received in evidence.)

Mr. Belnap: Mr. Examiner, when Mr. Tannehill presented his exhibit 1 and showed as to C. F. A. territory the rules governing the application of rates prior to the publication of the agency issue on behalf of all lines he took

the New York Central as representative and there has been some question since that time raised as to whether or not there was difference in language in any of the individual issues and I would like to request that Mr. Cole supply for the record within a time that he may suggest the provisions insofar as Chicago are concerned providing for the application of the reshipping rates, the Trans-Mississippi proportional and the Northwest proportional to C. F. A. territory for the lines for whom I read into the record the provisions relating to the application of proportional rates and, in addition, for the Wabash, the B. & O. and the Nickel Plate.

Mr. Cole: What other railroads were there, Mr. Belnap, besides B. & O., Wabash and Nickel Plate?

Mr. Belnap: I gave a tariff reference for the C. & O., Pennsylvania and Michigan Central as far as the rule governing the application of rates is concerned.

Mr. Day: You did not mention Nickel Plate, did you?

Mr. Cole: No, I did not hear him.

Mr. Day: You did not name any Nickel Plate tariff.

Mr. Belnap: No. I said those carriers and in addition. And for the B. & O., the Wabash and the Nickel Plate I [fol. 2580] would like to have the same statement show the date on which the general tariff provision regarding application of proportional rates which I just read from other individual lines' issues first became effective, separately as to the first paragraph thereof and the second paragraph thereof, if they were in those individual tariffs and became effective on different dates.

Exam. Taylor: Mr. Cole, agrees,—are you agreeable to furnishing that information?

Mr. Cole: Yes, I think we will agree.

Exam. Taylor: Will ten days be sufficient?

Mr. Cole: I believe so.

Exam. Taylor: Ten days for that.

Mr. Day: Why do you exclude other roads, Mr. Belnap?

Mr. Belnap: Well, I only did because Mr. Cole said, "Don't ask me for a lot" and I just picked out the names on my check that quick. I would be perfectly willing to have it supplemented and have an unlimited number if Mr. Cole wants to, but I discussed this with him before I asked him for it and he said, "Don't make too many roads."

Mr. Cole: Mr. Belnap, if in our securing of this same information that you wanted for those roads, if we find that it is quite possible and easy for us to get additional roads, you have no objection to our adding the additional roads in there?

Mr. Belnap: I have no objection to adding the additional roads and so far as the information that I read from the [fol. 2581] tariffs, if anything should be found in any part which is incorrect I would like to have it correct on this statement.

Mr. Cole: Is it understood that if we have difficulty getting the past history of the tariff of the individual roads that I will write to Mr. Belnap about that, as to that particular road?

Mr. Day: Do you want the Michigan Central? We will undertake to get it. The Pennsylvania, B. & O. and the New York Central are here.

Exam. Taylor: But you are pretty sure that you can furnish that in ten days?

Mr. Cole: Yes.

Mr. Belnap: Why don't you take twenty and be sure?

Exam. Taylor: You have got to have it in ten days before the brief date.

Mr. Belnap: Well, that will be ten days before.

Exam. Taylor: Make it fifteen days. We will split the difference. Is that all now?

Mr. Day: If your Honor please, I would like permission to offer in connection with these tariff provisions a copy of Information Circular 14388. I don't know what it contains but it is referred to in these tariffs and it seems to me it might have some information.

Mr. Belnap: That will be satisfactory to me.

Exam. Taylor: All right.

[fol. 2582] Mr. Belnap: And then what about Information Circular No. 21911?

Exam. Taylor: That will be fifteen days in like manner, Mr. Day.

Mr. Belnap: It is understood that the information that I have asked for similar to that contained in Mr. Tannehill's exhibit number 1 insofar as the individual lines is concerned is simply the rules as they were in effect immediately preceding the Jones' agency issue except as to that

general rule regarding the application of proportional rates and then I want to know as to that when it first became effective.

Exam. Taylor: Is that all?

Mr. Belnap: Yes.

Exam. Taylor: Is this a correct statement of the agreement that was reached off the record? A proposed report is requested by all parties and because of this request respondents agree to voluntarily postpone the schedules under suspension pending determination of the issues here considered.

Mr. Day: I don't have any objection to it.

Mr. Belnap: That is the way I understand the understanding.

Exam. Taylor: Any objection to that statement?

Mr. Cole: We have none.

Exam. Taylor: Mr. Brown?

Mr. Brown: I did not agree to it but if the respondents [fols. 2583-3652] and the protestants agree to it I, of course, will not offer any objection.

Exam. Taylor: The free copies of this record for respondents will go to Mr. Cole and for protestants to Mr. Belnap.

Mr. Cole: When is the brief date?

Exam. Taylor: It will be 30 days.

Mr. Cole: In the event the Commission does not issue a proposed report, as we understand will be done now, or as we have requested at least, we do ask that the case be assigned for oral argument.

Mr. Belnap: What did you say that brief date will be? Would you just as soon make it February 27th, which will be on a Tuesday?

Exam. Taylor: All right, make it February 27th. If that is all, the hearing in I. & S. 4718, Grain Proportionals Ex-Barge to Official Territory, is closed.

(At 4:55 o'clock p. m., January 26, 1940, hearing closed.)

[fol. 3653] In District Court of the United States, Northern District of Illinois, Eastern Division

No. 3714. Consolidated Cases

Cargill, Incorporated, et al., Plaintiffs,

v.

United States of America, Defendant

No. 3725

Inland Waterways Corporation, Plaintiff,

v.

United States of America, Defendant

Findings of Fact and Conclusions of Law—April 16, 1942

This cause coming on to be heard and the Court having heard arguments of counsel, and being fully advised in the premises, now makes the following

Findings of Fact

(1) Presently, and for many years, trunk line railroads operating to the east from Chicago, Illinois, including the carrier defendants herein, have maintained therefrom to eastern destinations proportional or re-shipping rates on grain and grain products (hereinafter referred to as grain), in carloads, which are and were lower than the local rates on the same commodities from and to the same points. As a representative example, to New York City, New York, the proportional or reshipping rate is 26 cents per hundred pounds and the local rate is 34.5 per hundred pounds. To destinations east of Buffalo and Pittsburgh the trunk line railroads maintain similar rates, although differing in amounts, all of said rates exhibiting a similar difference of 8.5 cents per hundred pounds between the proportional or reshipping rates, on the one hand, and local rates, on the other. Such proportional or reshipping rates apply upon reshipment from Chicago to grain received at Chicago over any route via a rail or a water transportation line from any origin, from whence the inbound interstate rate

via railroad is 8.5 cents per hundred pounds or greater, provided the reshipment takes place within a year after [fol. 3654] the grain is received at Chicago, and further provided that the billing of the inbound carriers, which is treated as representative of the grain, is recorded with the railroads and is cancelled at the time the grain represented thereby is reshipped. To destinations to the east of Chicago and intermediate to Chicago and Pittsburgh, proportional and reshipping rates lower than local rates are and were also provided. However, to such destinations there were and are three different levels of proportional or reshipping rates, one termed Trans-Mississippi, another Northwest, and another Reshipping. As to grain received at Chicago via rail and reshipped therefrom to said destinations, the application of the Trans-Mississippi, the Northwest, or the Reshipping Proportional or reshipping rate is dependent upon the origin from whence grain moved inbound to Chicago via rail. As to grain received at Chicago via a water transportation line, the Northwest proportional or reshipping rate is applicable, regardless of the origin and regardless of the route of the inbound movement. The local rates of the eastern trunk lines from Chicago to eastern destinations apply on all grain shipped via rail to which the proportional or reshipping rates above described do not by their terms apply.

(2) Grain presently entitled to the proportional or reshipping rates arrives at Chicago via three different characters of transportation services, *i. e.*, (1) via rail; (2) via barge over the Illinois River and connecting waterways and rivers; and (3) via lake steamer over the Great Lakes. The terms "ex-rail," "ex-barge," and "ex-lake," are used as referring to grain received via the respective means just stated, and also to grain that is reshipped upon the cancellation of the ex-rail, ex-barge, and ex-lake inbound billing.

(3) Little or no grain moves into and out of Chicago in continuous through movement. Rather, the inbound service via rail, via barge, or via lake steamer comes to an end by delivery of the grain into an elevator at Chicago, title to the grain commonly passing to a purchaser at that point, and the outbound reshipment comes later as an independent transaction.

[fol. 3655] (4) The Inland Waterways Corporation, operating the Federal Barge Lines, plaintiff in No. 3725, operates a barge line as a common carrier by water in Interstate Commerce on the Illinois waterways and the Mississippi and Missouri Rivers, and has heretofore transported ex-barge grain to Chicago, which ex-barge grain has been reshipped therefrom at the proportional or reshipping rates above described.

(5) Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, plaintiffs in No. 3714, each operates a general grain business and public elevators at Chicago. In the course of that business, they buy grain received via rail, via barge, and via lake on the basis of prices delivered Chicago, store that grain in public elevators awaiting sale, and subsequently sell and reship such grain via lake and via rail for consumption in eastern territory.

A. L. Mechling, doing business as A. L. Mechling Barge Lines, his position being the same as that of the Inland Waterways and the Secretary of Agriculture, intervened both before the Interstate Commerce Commission and in this Court.

(6) The purchase of grain by the plaintiffs in No. 3714 at Chicago on a delivered price basis results in imposing on the shipper of the grain the cost incurred in connection with the inbound transportation, and when a particular mode of transportation provides a saving in transportation costs as against some other mode of transportation, that saving accrues to the inbound shipper.

(7) Two of the plaintiffs in No. 3714, *i. e.*, Continental Grain Company and Norris Grain Company, operate elevators on the banks of the Illinois waterways, some of which have no facilities for rail shipments. These plaintiffs accumulate grain at such elevators for shipment to Chicago via barge with a view to storage at that point and subsequent merchandising and reshipment.

(8) The Baltimore and Ohio Railroad Company, Erie Railroad, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and

Ohio Railway Company, carrier defendants in the above-
[fol. 3656] entitled causes, are among the eastern trunk lines which maintain the proportional or reshipping rates and the local rates above described.

(9) By tariffs filed with the Interstate Commerce Commission to become effective October 15, 1939, the carrier defendants and others propose to change their existing tariffs so as to make the above described proportional or reshipping rates maintained by them inapplicable on the reshipment of grain arriving at Chicago via the Illinois waterways, the proposal being to continue the application of such proportional or reshipping rates on ex-rail and ex-lake grain. The plaintiffs in these causes, with others, protested this change in rate application on the ground that it would result in rates which would be unreasonable in violation of Section 1 of the Interstate Commerce Act, unjustly discriminatory in violation of Section 2 of said Act, unduly prejudicial and preferential in violation of Section 3 (1) of said Act, and unlawfully discriminatory as between defendants' connecting lines in violating of Section 3 (4) thereof. Responsive to such protests, the Commission by order of October 14, 1939, suspended the proposed change in rates and instituted an investigation into the lawfulness thereof in a proceeding before it entitled I. & S. Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory. By the order mentioned, the change was suspended until May 15, 1940. The investigation proceedings were not, however, concluded at that time and the defendant carriers voluntarily postponed the effective date of the proposed change until the Commission could conclude its investigation and enter an appropriate order, and to date no change has been made in said rates.

(10) After hearings in said investigation and suspension proceeding, in which the plaintiffs participated as parties thereto, the Commission, by Division 2, issued its report and order of July 31, 1941, officially reported in 246 I. C. C. 353. In that report and order, the Commission concluded that no change in rates would in fact be produced by the suspended tariff schedules, this on the stated ground that [fol. 3657] the existing tariff schedules did not make legal provision for the application of proportional or reshipping

rates to ex-barge grain. Consistent with that theory of the case, Division 2 entered a conclusion reading:

"We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates, and find that the schedules under suspension are not shown to be unlawful. An order will be entered vacating the order of suspension, and discontinuing this proceeding."

Pursuant to the finding just quoted, Division 2 of the Commission entered an order vacating and setting aside, as of August 30, 1941, the order of investigation and suspension.

(11) Prior to the effective date of that order, the plaintiffs in No. 3714 filed with the Commission a petition for reconsideration and reargument, and the plaintiff in No. 3725 filed with the Commission a petition for reconsideration, rehearing and reargument, and the Commission postponed the effective date of its order pending action on said petitions.

(12) By report on consideration and order of December 1, 1941, the Commission granted reconsideration and denied reargument and rehearing. In that report on reconsideration, it reversed the prior finding that the proposed tariff schedules did not provide a change in rates, and, in lieu, thereof, found that the proportional rates in issue were and had been legally applicable to ex-barge traffic when certain so-called policing provisions in the tariffs had been complied with.

(13) In its report on reconsideration, the Commission found, upon the merits of the case as follows:

"The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

"On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

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"(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful. [fol. 3658] "The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

"An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered."

And, pursuant to said findings, entered an order vacating and setting aside, as of December 22, 1941, the order originally entered instituting the proceeding, and discontinued the proceeding. Subsequently, the effective date of said order of December 1, 1941, was by orders extended to February 22, 1942.

(14) As preliminary to its ultimate conclusion, the Commission, in its report on reconsideration, found that it would take official notice of the fact that the Federal Barge Lines, and certain other barge lines, had filed their port-to-port grain rates with the Commission since the hearing in the cases, and also found:

"To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to 13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

"To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combinations will be 1.75, 4.75 and 0.75 cents, respectively, lower than the all-rail rates.

"To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus

880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the re-shipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5 cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

[fol. 3659] "To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

"The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul, and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

"Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traf-

fic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers, interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations."

(15) The Commission made no finding in its report as to inbound barge rates on ex-barge grain from St. Louis and Kansas City, Missouri, or as to the movement of such ex-barge grain, although the facts as to such rates and such movement were contained in the record before it.

[fol. 3660] (16) The reference by the Commission to sixth-class rates (27.5 per cent of first class) as having been prescribed or approved as a maximum reasonable basis of rates on grain in official territory referred only to cases involving local rates on grain, and not to cases involving reshipping or proportional rates as applied to ex-rail or ex-water grain.

(17) The distance via barge from Morris, Illinois, to Chicago, mentioned by the Commission, is substantially the same as the distance via rail from and to the same points.

(18) There is no evidence in the record to support the finding of the Commission that the proposed schedules will

not prohibit the movement by barge-rail, even to trunk-line territory. The Court finds as a fact upon the undisputed evidence that the basis on which grain is purchased delivered Chicago or delivered at a river bank elevator for barge movement to Chicago imposes all costs incurred on the inbound move on the producer of the grain; that any saving in inbound costs represented by the difference between the costs via barge and via rail accrues to the producer by way of higher net prices to him; that such saving does not accrue to the Chicago elevator operator so as to be available to him to offset a penalty in railroad rates east of Chicago; that ex-barge, ex-rail and ex-lake grain of the same species and grade are not only purchased at the same price at any given time but are sold at the same price; that ex-barge, ex-rail, and ex-lake grain are sold at eastern destinations at prices named on a basis delivered at such destinations and such prices are directly predicated on the freight rate from Chicago to destination to which the grain is entitled under the tariffs; that the Chicago elevator operators received no greater profit per bushel in merchandising grain received via barge than in merchandising grain received via rail; that the grain business is done on a margin of a quarter of a cent per bushel, and a difference in price in that amount will affect a sale; that no grain has ever moved from Chicago to the east on the basis of the local rates via rail; that if the proposed tariffs become effective, ex-barge grain cannot be sold in competition with ex-rail and ex-lake grain for a rail movement to an eastern destination; that if the proposed tariffs become effective, ex-barge grain can move [fol. 3661] from Chicago only via the lake, and even that avenue of reshipment will not be available to ex-barge grain during the winter months in which navigation is closed on the Great Lakes; that the carrier defendants and other eastern railroads who propose the change did so in the expectation that the ex-barge grain would not move outbound from Chicago via rail; and that the purpose of said carriers in proposing the change was to drive the grain inbound to Chicago off of the water and onto the rails.

(19) The finding of the Commission to the effect that the physical carriage beyond the reshipping point is substantially the same for ex-barge, ex-rail, and ex-lake grain, is supported by the evidence.

(20) At the time of the hearing in the case by the Commission the proportional or reshipping rates in issue before the Commission did not constitute a portion of a through rate of which all factors were on file with the Commission, in so far as the movement of ex-barge and ex-lake grain is concerned.

(21) At the time of the report of the Commission on reconsideration in the case the proportional or reshipping rates which were in issue before the Commission did not constitute a portion of a through rate of which all factors were on file with the Commission, in so far as ex-barge and ex-lake grain moving to Chicago via private or contract carriers or in a tow exempt from regulation under Section 303 (b) of Part III of the Interstate Commerce Act is concerned.

(22) The report of Division 2 of July 31, 1941, mentioned certain facts and matters which are not referred to in the report of the Commission on reconsideration of December 1, 1941. These include:—the history of the Illinois waterways; the principal shipping points along the Illinois waterways and the distance range to Chicago, no mention being made, however, of St. Louis and Kansas City, Missouri, from which the evidence showed a movement of ex-barge grain; the volume of movement of grain moving in and out of Chicago via various modes of transportation; a description of the Illinois grain producing section and available water and rail facilities; a description of the published rail rates into Chicago, including some specially reduced intrastate rates on corn established to meet the competition of the barge lines for the inbound movement; the movement of corn into Chicago over the Illinois waterways; the barge line charges for movements from Illinois [fol. 3662] producing points to Chicago; the Board of Trade rules affecting the merchandising of grain and showing the penalty imposed on one who delivers under a future contract for rail movement, if such one is unable to accompany the delivery by inbound billing which will entitle the grain to be reshipped on the proportional or reshipping rates to the east; the Chicago elevator capacity; a comparison of barge and rail delivery costs at Chicago showing the increased net prices to the corn producer which are received when the inbound movement is by barge rather

than by rail; the situation of inbound truck grain which is not now entitled to reshipment on the proportional or reshipping rates; the efforts of the western lines in meeting inbound barge competition; and a comparison of proportional or reshipping and local rates from Chicago to representative eastern destinations.

In addition, the report contains the following statements regarding a contention of those supporting the proposed change that the present adjustment has adversely affected the all-rail rate structure:—

"The western lines, supported by the respondent eastern lines, also contend that if application of the proportional rates is to be continued on unregulated ex-barge traffic, the result will be a breaking down of the established through grain-rate structure from West to East. The evidence already detailed with respect to the inability of the reduced intrastate rates on corn to accomplish their purpose in meeting the competitive barge charges supports this contention.

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"The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois. See Corn Grits from Kankakee Ill. to Battle Creek, Mich., 237 I.C.C. 413. If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain-rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

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"The application of the proportional rates here in issue on ex-barge grain has already broken down a portion of the Illinois grain-rate structure to Chicago, and an imminent break-down of the grain-rate structure east of Chicago is also indicated by the evidence. Tariffs on file here show that during the pendency of this proceeding the rates on corn have been substantially reduced within the State of Indiana, as well as from Indiana to Chicago and to certain stations in Ohio."

(23) The breakdown of the rail rate structure referred to by the Commission related to the publication by western [fol. 3663] lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

(24) If the proposed rates become effective, ex-barge grain will pay a greater charge upon reshipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories.

(25) If the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for purchasers of grain at Chicago to purchase ex-barge grain.

(26) If the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

(27) The natural transportation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market. The grain of producers enjoying cheap water transportation is sold delivered at Chicago. The measure of the inbound rate has no effect upon the Chicago price; it only affects the net price to producers. Producers who cannot use water transportation are under no disadvantage whatsoever because of the transportation advantage of other farmers located upon the waterways.

(28) If the order, referred to above, because effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

(29) The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an

attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

(30) The Interstate Commerce Commission, acting by Division 4 thereof, and conformable to the Transportation Act of 1940 (amending the Interstate Commerce Act), on [fol. 3664] November 6, 1941 made its findings and order, and pursuant thereto a Certificate of Public Convenience and Necessity was issued by the Interstate Commerce Commission to the Intervening Barge Line (A. L. Mechling, doing business as A. L. Mechling Barge Line). As more fully appears therefrom, the Intervening Barge Line is a certified common carrier by water subject to Part III engaged in carriage by barge only, between all points on the Illinois Waterway north of and including Havana, Illinois, (which includes Chicago) of all kinds of grain and soy beans. As also appears from said order of November 6, 1941, the intervening carrier transported soy beans and seven kinds of grain to Chicago, Illinois, in 1939, 1940 and 1941; shipments were also made to Pekin, Illinois, in 1939; after reaching destination the commodities generally continued movement by rail or water carriers to points in other states or foreign countries.

(31) The Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of Section 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 or contrary to the National Transportation Policy enacted by the last said act; but the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

(32) The intervening plaintiff sought to intervene in the proceedings before the Interstate Commerce Commission held by it for investigation of said rate proposal before its order approving said rate proposal became effective and to present evidence before the Interstate Commerce Commission addressed to the issues whether said rate proposal was illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940 and especially Section 3(4) thereof and the new National Transportation Policy, but

the Interstate Commerce Commission refused to permit him to do so.

Upon the above and foregoing findings of fact, the Court states the following:

CONCLUSIONS OF LAW

(1) The order of the Interstate Commerce Commission of December 1, 1941, is of a character which this Court is authorized to enjoin and set aside, and this Court has jurisdiction over the subject matter of the suits.

[fols. 3665-3666] (2) Plaintiffs in the above-entitled causes have an interest and standing which entitles them to bring and maintain these suits.

(3) The carrier defendants were properly joined in these suits and the Court has jurisdiction over said carrier defendants.

(4) The order of the Interstate Commerce Commission discriminates against water competition by the users of barges.

(5) An injunction should issue as prayed for in the bill of complaint.

Evan A. Evans, U. S. Circuit Judge; Charles E. Woodward, U. S. District Judge; William H. Holly, U. S. District Judge.

Dated: April 16, 1942.

[fol. 3667] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 3714, Consolidated Cases. No. 3725

CARGILL, INCORPORATED, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, et al., Defendants

INLAND WATERWAYS CORPORATION, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants

DECREE—April 16, 1942

And now these cases having come on for hearing upon motions of plaintiffs for preliminary injunction, and for final hearing, and the cases having been consolidated by order of this Court, and the cases having been argued by counsel, and the findings of fact and conclusions of law of the court having been entered herein,

It Is Ordered, Adjudged And Decreed that the order of the Interstate Commerce Commission of December 1, 1941, entered in the proceeding known as *Investigation & Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory, be* and it is hereby enjoined, annulled and set aside, and that the operation and effect of the said order be and it is hereby perpetually enjoined, and the defendants, The Baltimore and Ohio Railroad Company, the Erie Railroad Company, The New York Central Railroad Company, The New York, Chicago, and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and Ohio Railway Company, be and they are hereby permanently enjoined and restrained from acting upon the authority of the aforesaid order of the Commission, but said defendants are not restrained or enjoined

from filing or posting any rates or tariffs, other than upon the authority of the aforesaid order.

Evan A. Evans, U. S. Circuit Judge. Charles E. Woodward, U. S. District Judge. William H. Holly, U. S. District Judge.

Dated: April 16, 1942.

[fol. 3668] And on, to wit, the 21st day of May, A. D. 1942 came the Interstate Commerce Commission et al., by their attorneys and filed in the Clerk's office of said Court their certain Petition For Appeal in words and figures following, to wit:

1979

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725
CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3714

CONSOLIDATED

PETITION FOR APPEAL

The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chciago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, inter-

veners, in the above-entitled causes, which were consolidated by order of your Honorable Court of February 6, 1942, feeling themselves aggrieved by the final decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered April 16, 1942, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants and interveners consider the decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said defendants and interveners pray that a transcript of the record, proceedings and papers upon which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 21, 1942.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Washington, D. C.,
Attorneys for
Interstate Commerce Commission.

FRANK H. COLE, JR.,
1315 Union Central Life Building,
Cincinnati, Ohio,
LEO P. DAY,
La Salle St. Station,
Chicago, Ill.,
HORACE L. WALKER,
GEORGE DYCHE,
LAWRENCE CHAFFEE,
Attorneys for
The Baltimore and Ohio Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Erie Railroad Company, and
The Chesapeake and Ohio Railway Company.

BRYCE L. HAMILTON,
A. B. ENOCH,
La Salle St. Station,
Chicago, Ill.,
Attorneys for
The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
Chicago, Burlington & Quincy Railroad Company,
Charles M. Thomson, Trustee of Chicago & North Western Railway Company,
Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

[fol. 3671] And on, to wit, the 21st day of May, A. D. 1942 came the appellants by their attorneys and filed in the Clerk's office of said Court their certain Assignment Of Errors in words and figures following, to wit:

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725
CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Consolidated Civil Action File No. 3714

ASSIGNMENT OF ERRORS

Come now the Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cum-

mings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, in the above-entitled causes and file the following assignment of errors upon which they shall rely in the prosecution of the appeal to the Supreme Court of the United States herewith petitioned for in said causes from the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered on the sixteenth (16th) day of April, 1942:

1. The Court erred in holding that the order of the Interstate Commerce Commission discriminates against water competition by users of barges.

2. The Court erred in assuming to itself the power to determine whether there was or was not discrimination.

3. The Court erred in concluding that the carrier defendants were properly joined in these suits for hearing by the specially constituted three-judge Court, and that said Court has jurisdiction to enjoin said carrier defendants.

4. The Court erred in concluding that plaintiff Inland Waterways Corporation and intervening plaintiff A. L. Mechling, doing business as A. L. Mechling Barge Line, have an interest and standing which entitle them to bring and maintain their suit.

5. The Court erred in concluding that the order of the Interstate Commerce Commission of December 1, 1941, is of a character which the Court is authorized to enjoin and set aside.

6. The Court erred in concluding that an injunction should issue as prayed for in the complaints.

7. The Court erred in failing to find that in a court review of an order of the Interstate Commerce Commission the range of issues is narrow, being limited to a determination of whether or not the Commission's order violated the Constitution, exceeded powers delegated by statute, or was such an arbitrary exercise of power as virtually to transcend the authority conferred.

8. The Court erred in substituting its judgment for that of the Interstate Commerce Commission on administrative matters which have been placed by Congress within the jurisdiction of the Interstate Commerce Commission.

9. The Court erred in weighing the evidence and reaching conclusions upon administrative matters contrary to those found by the Interstate Commerce Commission.

10. The Court erred in failing to find that the order of the Commission was:

a. within the jurisdiction of the Commission;

b. supported by substantial evidence;

c. founded upon essential findings of fact;

d. free from any error of law;

e. free from abuse of discretion or power by the Interstate Commerce Commission.

11. The Court erred in ascribing any weight to the Commission's failure to make a finding in its report as to inbound charges on ex-barge grain from St. Louis and Kansas City, Mo., or as to the movement of such barge grain although the facts as to such rates and such movement were contained in the record before it.

12. The Court erred in finding that the reference by the Commission to sixth-class rates (27.5 per cent

of first-class) as having been prescribed or approved as a maximum reasonable basis of rates on grain in official territory referred only to cases involving local rates on grain, and not to cases involving reshipping or proportional rates as applied to ex-rail or ex-water grain.

13. The Court erred in finding that there was no evidence in the record to support the finding of the Commission that the proposed schedules will not prohibit the movement by barge-rail, even to Trunk Line Territory. The Court further erred in connection with this finding in substituting its judgment, from the evidence on the point, for the conclusions reached by the Interstate Commerce Commission upon that evidence.

14. The Court erred in finding that the breakdown of the rail rate structure referred to by the Commission related to the publication by western lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

15. The Court erred in finding that if the proposed rates were to become effective, ex-barge grain would pay a greater charge upon reshipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories.

16. The Court erred in finding that if the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for pur-

chasers of grain at Chicago to purchase ex-barge grain.

17. The Court erred in finding that if the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

18. The Court erred in finding that the natural transportation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market; that the grain of producers enjoying cheap water transportation is sold delivered at Chicago; that the measure of the inbound rate has no effect upon the Chicago price; that it only affects the net price to producers. and that producers who cannot use water transportation are under no disadvantage whatsoever because of the transportation advantage of other farmers located upon the waterways.

19. The Court erred in finding that if the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

20. The Court erred in finding that the action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

21. The Court erred in finding that the Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of section 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 or contrary to the National Transportation Policy enacted by the last said act; and that the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

22. The Court erred in admitting and considering evidence other than evidence before the Interstate Commerce Commission.

23. The Court erred in failing to hold that the evidence supports the findings and conclusions of the Interstate Commerce Commission, among which are the following:

(a) That as originally published the so-called northwest proportional rates from Chicago applied on grain originating at points in northwest territory which was specifically defined and did not include any origin points in Illinois.

(b) That the application of the proportional rates to ex-barge traffic will result in a breaking down of the established grain rate structure from west to east.

(c) That the proportional rates from Chicago to central territory destinations on grain originating in trans-Mississippi River territory are uniformly 3 cents less than the proportional rates applicable on traffic originating in northwest territory, thus maintaining the equalization prescribed in *Southwestern Millers League* v. *Atchison, T. & S. F. Ry. Co.*, 173 I. C. C. 86, 227 I. C. C. 795, 231 I. C. C. 130,

and that if the suspended schedules are found justified the increases in the rates to the central territory points named would range from 1.5 to 7.5 cents and to the eastern points named the increase would be substantially 8.5 cents.

(d) That the proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth class rates (27.5 per cent of first class) which have been prescribed or approved as a maximum reasonable basis and not unreasonable or otherwise unlawful on grain or grain products within official territory.

(e) That to central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates.

(f) That the application of the barge rates to Chicago, plus rail proportionals beyond, bring about evasions of the principle of the Fourth Section of the Interstate Commerce Act.

(g) That the proposed schedules have the effect of maintaining the existing grain rate structure which has already been partially disrupted in the State of Illinois by the application of the proportional rates on ex-barge grain, and that if the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of Fourth-Section evasions, also disrupt the grain rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

(h) That the application of proportional rates to ex-barge grain discriminates against all-rail movements and in favor of water-rail movements.

(i) That the application of the proportional rates on ex-barge grain has already broken down a portion of the Illinois grain rate structure to Chicago; and an imminent break-down of the grain rate structure east of Chicago is indicated.

(j) That to central territory the barge-rail combination under the proposed schedules will still be generally lower than the all-rail rate from Morris, Ill., a representative origin, via Chicago to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combination being 1.75, 4.75 and 0.75 cents respectively, lower than the all-rail rate.

(k) That to trunk-line territory the inbound barge movement represents a very small portion of the total haul, but about 0.6 per cent, and to this territory the barge-rail combinations are far below the local rates from the reshipping points in contravention of the Fourth Section rule, while the all-rail rates are in strict conformity with that rule.

(l) That the rail-lake-rail rates from the northwest do not contravene Fourth Section principles or jeopardize the all-rail rate structure.

(m) That the reshipping or proportional rates are in their essence balances of through rates and said balances are, of course, determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service.

(n) That the respondents are justified under section 1 in treating the ex-barge traffic the same as local or truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the Act.

24. The Court erred in failing to dismiss the complaints.

Dated May 21, 1942.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Washington, D. C.,
Attorneys for
Interstate Commerce Commission.

FRANK H. COLE, JR.,
1315 Union Central Life Building,
Cincinnati, Ohio,
LEO P. DAY,
La Salle St. Station,
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HORACE L. WALKER,
GEORGE DYCHE,
LAWRENCE CHAFFEE,
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The Baltimore and Ohio Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Erie Railroad Company, and
The Chesapeake and Ohio Railway Company.

BRYCE L. HAMILTON,
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La Salle St. Station,
Chicago, Ill.,
Attorneys for
The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
Chicago, Burlington & Quincy Railroad Company,
Charles M. Thomson, Trustee of Chicago & North Western Railway Company,
Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

1691

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725
CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	CONSOLIDATED Civil Action File No. 3714

ORDER ALLOWING APPEAL

Filed May 21. 1942

In the above-entitled causes, the Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago

& North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final decree of this Court in these causes, entered April 16, 1942, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided, it is

ORDERED AND DECREED that the appeal be, and the same is hereby, allowed as prayed for,

And it is further

ORDERED that petitioners, other than the Interstate Commerce Commission, give bond in the sum of $250.00..... as a cost bond.

Dated May 21, 1942.

Holly

United States District
Court Judge.

[fol. 3685] IN DISTRICT COURT OF THE UNITED STATES

Civil Action File No. 3725, Civil Action File No. 3714
Consolidated

[Title omitted]

NOTICE OF APPEAL—Filed May 25, 1942

To: The Attorney General for the State of Illinois:

You are hereby notified that the District Court of the United States for the Northern District of Illinois, Eastern Division, on May 21, 1942, filed and entered an order allowing an appeal by The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and [fol. 3686] St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, to the Supreme Court of the United States from a decree filed and entered on the 16th day of April, 1942, in the above-entitled causes, and that the citation signed by such Court on May —, 1942, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendant's jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served on appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, sec. 47a, Act of March 3, 1911, c. 231, Sec. 210, 36 Stat. 1150, as amended by the Urgent Deficien-

[fols. 3687-3716] cies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

Dated May 21, 1942.

Daniel W. Knowlton, Chief Counsel, Daniel H. Kunkel, Washington, D. C., Attorneys for Interstate Commerce Commission. Frank H. Cole, Jr., 1315 Union Central Life Building, Cincinnati, Ohio, Leo P. Day, La Salle St. Station, Chicago, Ill., Horace L. Walker, George Dyche, Lawrence Chaffee, Attorneys for The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and The Chesapeake and Ohio Railway Company. Bryce L. Hamilton, A. B. Enoch, La Salle St. Station, Chicago, Ill., Attorneys for The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company.

Received a copy of the foregoing notice this 21st day of May, A. D. 1942.

George F. Barrett, Attorney General for State of Illinois.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

File No. 3725
Civil Action

Consolidated

CARGILL, INCORPORATED, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

Civil Action
File No. 3714

DEFENDANTS' (APPELLANTS') PRAECIPE FOR TRANSCRIPT OF RECORD

Filed May 21, 1942

To the Clerk of the above-named Court:

You are hereby requested to prepare a transcript of the record in the above-entitled causes to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript of record the following, to wit:

(1) Complaint and appendices thereto, in No. 3725, filed December 17, 1941.

(2) Amended Complaint in No. 3725.

(3) Answer of Interstate Commerce Commission in No. 3725.

(4) Answer of United States of America in No. 3725.

(5) Joint answer of railroad defendants in No. 3725.

(6) Petition of Intervention and Complaint of the Secretary of Agriculture in No. 3725.

(7) Notice, Petition of Intervention, and Complaint with Exhibits I and II thereto, of A. L. Mechling in No. 3725.

(8) Answer of Interstate Commerce Commission to Petition of Intervention and Complaint of Secretary of Agriculture in No. 3725.

(9) Answer of Interstate Commerce Commission to Petition of Intervention and Complaint of A. L. Mechling in No. 3725.

(10) Petition of Intervention and Answer of Alton Railroad Company, *et al.*, in No. 3725.

(11) Notice and Motion for Leave to Drop a Party Defendant and to Summon Additional Defendant, and Order of Court thereon of January 16, 1942, and Amended Complaint in No. 3725.

(12) Order of February 6, 1942, in No. 3725 granting Motion of A. L. Mechling for leave to intervene.

(13) Complaint and appendices thereto, in No. 3714, filed December 16, 1941.

(14) Answer of Interstate Commerce Commission in No. 3714.

(15) Answer of the United States of America in No. 3714.

(16) Answer of railroad defendants in No. 3714.

(17) Petition of Intervention and Complaint of the Secretary of Agriculture in No. 3714.

(18) Petition of Intervention and Answer of Alton Railroad Company, *et al.*, in No. 3714.

(19) Notice and Motion for Leave to Drop a Party Defendant and to Summon an Additional Defendant, and Order of Court thereon of January 16, 1942, and Amended Complaint, in No. 3714.

(20) Order of February 6, 1942, consolidating Nos. 3725 and 3714.

(21) Order of February 6, 1942, granting Petition of Intervention of Secretary of Agriculture and making proposed Complaint part of the record.

(22) Order of February 6, 1942, granting Motions of Attorney General for leave to file answers.

(23) Order of February 6, 1942, permitting the Alton Railroad Company, *et al.*, to intervene in behalf of defendants.

(24) Order of February 6, 1942, concluding arguments and taking the cause under advisement.

(25) Testimony introduced before the Interstate Commerce Commission at hearings dated December 19, 20, 21, 1939, and January 17, 18, 19, 20, 22, 23, 24, 25, 26, 1940.

(26) All exhibits introduced at said hearings before the Interstate Commerce Commission.

(27) Plaintiffs' requested findings of fact and conclusions of law.

(28) Interstate Commerce Commission's suggested findings of fact and conclusions of law.

(29) Secretary of Agriculture's suggested findings of fact and conclusions of law.

(30) A. L. Mechling's suggested findings of fact and conclusions of law.

(31) Defendant rail carriers' suggested findings of fact and conclusions of law.

(32) The Alton Railroad Company, *et al.*, suggested findings of fact and conclusions of law.

(33) Findings of fact and conclusions of law entered by District Court.

(34) Final Decree.

(35) Petition for Appeal.

(36) Notice of Appeal and acknowledgment of service.

(37) Assignments of error.

(38) Order allowing appeal.

(39) Notice to Attorney General of the State of Illinois.

(40) Citation on appeal.

(41) Statement of jurisdiction of the Supreme Court of the United States.

(42) Praecipe for transcript of record and acknowledgment thereof.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Washington, D. C.,
Attorneys for
Interstate Commerce Commission.

FRANK H. COLE, JR.,
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LEO P. DAY,
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Chicago, Ill.,
HORACE L. WALKER,
GEORGE DYCHE,
LAWRENCE CHAFFEE,
Attorneys for
The Baltimore and Ohio Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Erie Railroad Company, and
The Chesapeake and Ohio Railway Company.

BRYCE L. HAMILTON,
A. B. ENOCH,
La Salle St. Station,
Chicago, Ill.,
Attorneys for
The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
Chicago, Burlington & Quincy Railroad Company,
Charles M. Thomson, Trustee of Chicago & North Western Railway Company,
Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

Service of the foregoing praecipe for transcript of record and receipt of copy thereof are hereby acknowledged this ..... day of May, 1942.

.....

For Inland Waterways Corporation; Cargill, Inc.; Norris Grain Co.; Rosenbaum Brothers; Santa Fe Elevator Co.; Continental Grain Co.

.....

For Secretary of Agriculture.

.....

For A. L. Mechling, doing business as A. L. Mechling Barge Line.

1700

[fol. 3738] And on, to wit, the 26th day of January, A. D. 1942 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Notice, Motion for Preliminary Injunction and Supporting Affidavit in words and figures following, to wit:

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INLAND WATERWAYS CORPORATION,
Plaintiff,
vs.
UNITED STATES OF AMERICA, et al.,
Defendants.

Civil Action
File No. 3725

NOTICE

To: Mr. S. R. Brittingham, Jr.
Special Assistant to Attorney General
Department of Justice
Washington, D. C.

Mr. Daniel H. Kunkel, Attorney
Interstate Commerce Commission
Washington, D. C.

Mr. J. Albert Woll
U. S. District Attorney
450 U. S. Court House
Chicago, Illinois

Mr. Frank H. Cole, Jr.
Mr. Erich W. Lademann
Attorneys for B. & O. R. R. Co.
315 Grand Central Station
Chicago, Illinois

Mr. Clyde E. Shorey
Attorney for Erie Railroad
2130 Field Bldg.
Chicago, Illinois

Mr. Leo P. Day, Attorney
New York Central System
525 LaSalle St. Station
Chicago, Illinois

Mr. Horace L. Walker
Mr. Bryce L. Hamilton
Attorneys for The N. Y. C. & St. L. R. R. Co.
1400 First Nat'l Bank Bldg.
Chicago, Illinois

Mr. Theodore Schmidt
Mr. George F. Dyche
Attorneys for Penn. R. R. Co.
625 Union Station, Chicago, Ill.

Mr. Horace L. Walker
Mr. William G. Wise
Attorneys for C. & O. Ry. Co.
69 W. Washington, Chicago, Ill.
Attorneys for Defendants.

PLEASE TAKE NOTICE that on Friday, the 6th day of February, 1942, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, I shall appear before His Honor, Judge Charles E. Woodward, in his courtroom, Room 677, United States Courthouse, Chicago, Illinois, or before whatever judge may be sitting in his place and stead, and then and there present a motion on behalf of plaintiff for the issuance of a preliminary injunction as prayed for in the complaint of the above-entitled cause, copies of which motion and supporting affidavits are attached hereto.

(Signed) NUEL D. BELNAP,
(Signed) ROBERT N. BURCHMORE,
Attorneys for Plaintiff,
2106 Field Building,
Chicago, Illinois.
Central 0204.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

Robert N. Burchmore, being first duly sworn, deposes and says that he has served copies of the foregoing notice, motion, and supporting affidavits therein described upon the defendants in the above-entitled case, by depositing the same in the United States mails in Chicago, Illinois, on January 26, 1942, addressed to their attorneys of record, as above, in sealed envelopes with proper postage prepaid.

(Signed) ROBERT N. BURCHMORE.

Subscribed and sworn to before
me this 26th day of January,
1942.

HARRIET BOGANS,
Notary Public.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

Inland Waterways Corporation, *Plaintiff*, vs. United States of America, *et al.*, *Defendants*.	Civil Action No. 3725

MOTION FOR PRELIMINARY INJUNCTION.

Now comes plaintiff in the above-entitled cause by its attorneys and moves this Court to enter a preliminary injunction, enjoining and setting aside the operation and effect of a certain order of the Interstate Commerce Commission of December 1, 1941, in Investigation and Suspension Docket No. 4718, *Grain Proportional Ex-Barge to Official Territory*, and to enter a further preliminary injunction, enjoining and prohibiting the carrier defendants from making effective under the authority of said order the changes in their tariffs and schedule of rates approved as lawful by the Commission in said order of December 1, 1941, which said preliminary injunctions were prayed for in the complaint heretofore filed herein, and in support of said motion plaintiff presents the attached affidavits, which said affidavits are made a part hereof as fully as if incorporated herein.

WHEREFORE, plaintiff prays that the said preliminary

injunction may be issued forthwith, as prayed for in the verified complaint filed herein.

Respectfully submitted,

(Signed) NUEL D. BELNAP,
(Signed) ROBERT N. BURCHMORE,
Attorneys for Plaintiff,
2106 Field Building,
Chicago, Illinois.
Central 0204.

AFFIDAVIT.

STATE OF MISSOURI,
CITY OF ST. LOUIS. } ss.

H. E. Ruddiman, being first duly sworn, deposes and says that he is General Traffic Manager and duly authorized agent of the plaintiff Inland Waterways Corporation, in the above-entitled cause; that the following facts are true and require immediate issuance of the preliminary injunction sought herein:

1. The plaintiff, Inland Waterways Corporation, hereinafter referred to as the barge line, is a common carrier by water in interstate commerce which operates a barge line for the transportation of property on the Mississippi River between New Orleans, Louisiana, and Minneapolis, Minnesota, and on certain of its tributaries, including the Missouri River from Kansas City, Missouri-Kansas, to its confluence with the Mississippi River, and the Illinois waterway from Chicago, Illinois, to its confluence with the Mississippi River. Via this barge line it transports general commodities, including grain in bulk, from numerous origins on the various rivers which it serves to Chicago, Illinois.

2. In the years 1939, 1940, and 1941, during the season of open navigation on the rivers on which it operates, the barge line transported to Chicago the following quantities of grain in bulk, all of said grain having been transported in tows with freight other than bulk commodities: 43,292 tons in 1939, 38,985 tons in 1940, 37,093 tons in 1941.

This grain consisted of wheat and corn, and came from the following origins: Havana, Dallas City, Montezuma, Kampsville, Naples and East St. Louis, Illi-

nois, St. Louis and Kansas City, Missouri, Kansas City, Kansas, Memphis and Heloise Siding, Tennessee.

3. During the open season of navigation, the barge line continually solicits grain from the origins above named, and from other origins from which it provides rates for barge movement, to Chicago. In so doing, it competes with various lines of railroad operating as common carriers by railroad in interstate commerce from said origins to Chicago, Illinois. Said lines of railroad include, among others, the lines of The Atchison, Topeka and Santa Fe Railway Company, the Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Chicago and North Western Railway Company, and the Illinois Central Railroad Company. All of said lines of railroad terminate at Chicago and those companies do not operate lines of railroad to the east thereof.

4. Both the barge line and competing railroads transport grain in bulk to Chicago from Kansas City, Missouri-Kansas, and from other origins above named. On arrival of such grain at Chicago, it is the practice both of the barge line and of the competing railroads to deliver such grain to the owner thereof at storage elevators in the Chicago switching district, grain arriving both via barge and via rail being delivered at the same elevators. This grain is commonly referred to as ex-rail or as ex-barge grain, depending upon the nature of the inbound transportation. Similarly, grain arriving at Chicago via lake steamer from other lake ports is likewise delivered to the owner thereof at the same elevators as is ex-rail or ex-barge grain, and is commonly referred to as ex-lake grain.

5. Prior to March 1, 1941, none of the rates charged by plaintiff for the transportation shown above were on file with the Interstate Commerce Commission; since March 1, 1941, all of the rates maintained and assessed by plaintiff, including the rates provided by it for the transportation of bulk grain from the ports above named to Chicago, and between other ports, have been filed with the Interstate Commerce Commission, pursuant to the requirements of Part III of the Interstate Commerce Act. (Transportation Act of 1940, 54 Stats. 898.)

6. At the present time, the railroad defendants in the above-entitled suit, and other railroads operating to the east from Chicago duly publish, maintain and file with the Interstate Commerce Commission tariffs under which ex-barge grain from Kansas City, Missouri-Kansas, and from all other origins on the inland waterways to the west of Chicago, ex-rail grain from Kansas City, Missouri-Kansas, and from all other origins on railroads to the west of Chicago, and ex-lake grain from Duluth, Minnesota, and from other lake ports (or other grain occupying the status of such grain in the sense noted in the immediately succeeding paragraph) may be reshipped from Chicago to eastern destinations via the lines of said defendant railroads on a proportional or reshipping rate (which, to New York, for example, is 26 cents per hundred pounds), provided only that the billing covering the inbound move via rail, via barge, or via lake is properly recorded with representatives of the outbound rail carriers, that the reshipment takes place within a year after the termination of the inbound move, and that certain other requirements of the railroad tariffs relating to the proper identification of the grain as having

received a transportation service to Chicago have been complied with. Said proportional or reshipping rate is less than the local rate which is provided in the defendant's tariffs to apply on all grain not entitled to the proportional or reshipping rate when shipped from Chicago to eastern destinations, the local rate to New York, for example, being 34½ cents per hundred pounds, or 8½ cents higher than the proportional or reshipping rate. Similar proportional or reshipping rates less than local rates are maintained to all destinations east of Chicago, said rates differing from the representative rates to New York just stated only in the amount thereof and the amount of the difference between the lower proportional or reshipping rates, on the one hand, and the higher local rates on the other.

7. In making such a reshipment on a proportional or reshipping rate, the shipper is not required by the present tariffs of the defendants to reship the identical grain received inbound but is required only to certify that the tonnage offered for the outbound reshipment is representative of the tonnage transported to Chicago upon the inbound billing registered with representatives of the outbound carrier. Consequently, all references herein to ex-rail, ex-barge, or ex-lake grain are to be understood as meaning either the identical grain or grain representative thereof, within the meaning of the tariff rules.

8. Grain heretofore transported to Chicago by the barge line has been reshipped to eastern destinations under the arrangement and upon the proportional or reshipping rates above described.

9. If the order of the Commission sought to be enjoined in the above-entitled case becomes effective, ac-

cording to its terms, on February 22, 1942, the railroads to whom that order is directed, including the railroads who are defendants in the above-entitled suit, have announced an intention to act upon the authority thereby conferred.

10. If the railroad defendants herein are permitted to make effective the change in rates authorized by said order and proposed by defendants, the defendants will thereafter transport ex-rail grain from Kansas and the ex-lake grain from Duluth on proportional or reshipping rate of 26 cents to New York when such grain is reshipped from Chicago thereto, but will cease to transport ex-barge grain from Kansas City at that rate and will demand a rate of 34½ cents when such grain is reshipped from the same elevator in Chicago to the same elevator in New York via the same line of railroad. To all other destinations east of Chicago, there will be similar differences between the rates applicable upon a reshipment of ex-barge grain, on the one hand, and ex-rail or ex-lake grain on the other hand, differing only in the amount by which the rate on ex-barge is made higher.

11. If the tariff rate via the lines of the defendant railroads on ex-barge grain to New York City is made 8½ cents higher than the tariff rate maintained by the same lines of railroad on ex-rail or ex-lake grain, and if similar rate spreads, differing only in the amount thereof, are made effective to other rate destinations in the states to the east of Chicago, it will be impracticable to reship ex-barge grain from Chicago to eastern destinations via railroad. Consequently no shipper at an origin west of Chicago served by the barge line, having grain to ship to Chicago, will use the service of the barge line in the transportation of such grain

if either such shipper or his vendee desires to reship such grain via railroad to a destination east of Chicago,

12. If the order sought to be enjoined in the above-entitled suit becomes effective and if the railroads, defendants herein, make the change in rates and charges authorized thereby, the grain which plaintiff transports via barge from Kansas City and other origins to Chicago will not be entitled, under the tariffs, to the same privileges and rates upon reshipment from Chicago to eastern destinations, such as New York, as said grain would be entitled to if transported from Kansas City and other origins to Chicago via the line of a rail carrier or if transported from any lake port to Chicago via a lake steamer.

Under such circumstances there will be less incentive for shippers to use the service of the barge line to Chicago and a correspondingly greater incentive to use to Chicago the service of railroads with which the barge line competes; and the plaintiff will not secure for transportation to Chicago as much grain as it would secure if the same rates were applied upon a reshipment of ex-barge grain as will be applied upon a reshipment of ex-rail or ex-lake grain.

13. By reason of these facts immediate and irreparable injury, loss, and damage will result to the plaintiff unless the preliminary injunction be issued forthwith.

(Signed) H. E. Ruddiman.

Subscribed and sworn to before
me this ..... day of January,
1942.

C. S. Murray,
Notary Public.

[fol. 3751] IN DISTRICT COURT OF THE UNITED STATES

Civil Action File No. 3714

Civil Action File No. 3725

[Title omitted]

TRANSCRIPT OF PROCEEDINGS—Filed June 3, 1942

Be it Remembered, that heretofore, to wit, on Friday, the 6th day of February, A. D. 1942, at the hour of 10 o'clock A. M., being one of the days of said term of court, before the Honorable Evan A. Evans, Judge of the United States Circuit Court of Appeals; Charles E. Woodward, and William H. Holly, Judges of the United States District Court, this cause came on for hearing upon the pleadings heretofore filed herein.

—2—

APPEARANCES:

Nuel D. Belnap and Robert N. Burchmore, representing the plaintiffs;
Edward B. Hayes, representing the intervening petitioner, A. L. Mechling;
[fol. 3752] Haskell Donoho, representing the United States Department of Agriculture;
F. J. Cody, representing J. Albert Woll, United States District Attorney;
Daniel H. Kunkel, representing the Interstate Commerce Commission;
Frank H. Cole, Jr., representing Rail Carrier Defendants;
Lawrence Chaffee, representing C. & O. RR., and Nickel Plate RR;
A. B. Enoch, representing intervening Western rail carriers.

COLLOQUY

The Clerk: Civil Action File No. 3714 and 3725, Cargill, Incorporated, versus United States of America, et al.; leave to file answer of Attorney General.

Mr. Cody: Your Honors, my only purpose is to try to clarify the interest of the United States in this case. Under

Title 28, Section 45-A, the Attorney General is to represent the United States in actions of this type. However, the

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answer forwarded by the Attorney General yesterday, and which I filed, stated that the Attorney General did not wish to take part in the proceedings as the Department of Agriculture is seeking to be made a party plaintiff, and the Interstate Commerce Commission is already in the case as a party defendant. So Mr. Donoho is here to represent the Department of Agriculture and Mr. Kunkel to represent the Interstate Commerce Commission.

So all we want to do is file answers, and let them handle the interests of the Government.

[fol. 3753] Judge Evans: You say you want to file answers?

Mr. Cody: Yes, sir.

Judge Evans: Will they be any different from what they were?

Mr. Cody: We state in our answers that the Attorney General isn't taking part in the proceedings.

Judge Woodward: The answers have been filed?

Mr. Cody: Yes, they are filed.

Judge Evans: All right. Is there anything else?

The Clerk: No. 3725, Inland Waterways Corporation versus United States of America, et al., leave to file petition of intervention of A. L. Mechling, doing business as Mechling Barge Lines.

Mr. Hayes: The Department of Agriculture and the A. L.

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Mechling Barge Lines are both seeking leave to intervene as plaintiffs in this cause. My motion is on file for leave to intervene, and I do not understand it is opposed by the other side.

Judge Evans: Whom do you represent?

Mr. Hayes: I represent the A. L. Mechling Barge Line, your Honor. The Mechling Barge Line is the line which brought most of the grain to Chicago over the period that was covered by this record.

Judge Evans: Permission is granted.

Mr. Hayes: There is one thing, your Honors, there are answers on file either to the intervening petition of the Department of Agriculture or to my petition, and I pre-

sume a rule to answer in a short time will be agreeable to counsel.

Judge Evans: Well, they are here today, aren't they?

Mr. Hayes: Yes, but the issues are——

[fol. 3754] Judge Evans: Have there been any answers filed to the intervening petitions?

Mr. Kunkel: If your Honors please, the Interstate Commerce Commission does not oppose this intervening petition. They do desire to file answers to the intervening complaint.

Judge Evans: That will take time then.

Mr. Kunkel: I think we can state generally that the an-

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swer of the Commission will be a denial of the allegation of errors set up in the intervening complaint, and that the answer can be filed within a day or two. In other words, I don't see that there is any obstacle to proceeding with the complete hearing on the merits this morning.

Judge Woodward: Wasn't an answer filed to the original complaint?

Mr. Kunkel: He makes several allegations of error that are not set up in the original complaint.

Judge Evans: We will take it for granted then the answer is a general denial of the allegation of errors.

The Clerk: No. 3714 and No. 3725, Cargill, Incorporated, et al., versus United States of America, et al., and Inland Waterways Corporation versus United States of America, et al., leave for petition of intervention of Secretary of Agriculture is granted and the complaint is made a part of the record?

Judge Evans: That will be granted.

The Clerk: No. 3725, Inland Waterways Corporation versus United States of America, et al., and No. 3714, Cargill, Incorporated, versus United States of America, leave to consolidate with No. 3714, Cargill, Incorporated, versus United States of America, et al.

Judge Evans: No objection?

[fol. 3755] —6—

Mr. Burchmore: I represent the moving party, your Honors.

Judge Evans: No objection; it will be granted.

The Clerk: No. 3714 and No. 3725, Cargill, Incorporated, et al., versus United States of America, et al., and Inland Waterways Corporation versus United States of America, et al., consolidated for hearing.

Judge Evans: All right, proceed.

Mr. Enoch: If your Honors please, several days ago on behalf of the Western lines, Chicago, Alton, and others, I served notice that I would present to your Honor, Judge Woodward, a petition for leave to intervene and file answer. That petition was presented here several days ago, and the motion for leave to intervene and file answer was continued until this morning. I would like to present that motion now and ask the Court to rule on it.

Judge Evans: Is there any objection to it? (No response.) Granted. I suppose we are now ready to proceed.

Mr. Belnap: If the Court please, this case is noticed for hearing today on a motion for an interlocutory injunction on behalf of the plaintiffs, and by affidavits. I have talked to the opposing parties in the case and I understand it is agreeable to all that the hearing today may stand as the final hearing in the cause.

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Judge Evans: That is very agreeable. The Court will accept the stipulation of the parties, and the hearing which is on the temporary order will be a hearing on the final order.

Mr. Belnap: Thank you.

Judge Evans: Now then, proceed.

And thereupon the plaintiffs, to maintain the issues on their behalf, introduced the following evidence, to wit:

[fol. 3756] Mr. Belnap: On behalf of the plaintiffs in the two causes, I desire to offer in evidence a copy of the transcript of evidence before the Commission, certified to by the Secretary of the Commission, there being two certificates, one covering the transcript proper and the other the exhibits in the case.

Judg Evans: Now then, is there any objection to that offer? (No response.) Then it may be received.

(Whereupon, the said documents were marked and received in evidence as Plaintiffs' Exhibit No. 1, and the same are in words and figures as follows:)

[fol. 3757] Page 8

Mr. Belnap: Purely for the purpose of completing the record, I desire to offer a certified copy of the order of the Commission postponing the effective date of its order, which is the subject of these suits, to February 22, 1942.

Judge Evans: It may be received.

(Whereupon, the said document was marked and received in evidence as Plaintiffs' Exhibit No. 2, and the same is in words and figures as follows:)

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Mr. Hayes: On behalf of the intervening plaintiff, Mechling, I desire to offer in evidence certified copies of the order of the Commission of November 6, 1941, finding that line to be a common carrier subject to Part 3, and also of the certificate granted pursuant to that order to engage in the transportation of grain to points on the Illinois River and the waterway north of and including Havana, Illinois, which, of course, includes Chicago and the rate-break points in question.

(Whereupon, said document was marked for identification as Intervening Plaintiff's Exhibit No. 1.)

Mr. Hayes: I also desire to offer in evidence the order of the Commission, a certified copy of it, denying the application for administrative relief in this cause, which was made by A. L. Mechling.

(Whereupon, said document was marked for identification as Intervening Plaintiff's Exhibit No. 2.)

Judge Evans: Is there any objection?

Mr. Kunkel: If your Honors please, the offer of the re-
[fol. 3758] port and order of the Commission, in which the Commission finds the Mechling Barge Line to be a common carrier is, of course, not part of the evidence that was

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before the Commission, and constitutes new evidence in this cause. I think that it is unnecessary to put this in at this time. The Commission in its report recognized the common carrier status of this company and I think that would be sufficient for the intervener's purposes in this case.

Mr. Hayes: Not quite. The Commission did say it could take official notice of actions which had been taken by the Commission after the report of Division 2 in this cause. Having so stated, it was, of course, before the Commission in respect of everything that had been done by the Commission in this collateral proceeding before the Commission.

Your Honors should be advised, I think, of the facts specifically of which the Commission says that it did take official notice and which are not recited in detail in the specific record that has been filed here, but which are included in the offers which I have now made. Unless counsel doesn't feel that the Court ought to consider the matters which the Commission says it took official notice of, he may withdraw his objection.

Mr. Kunkel: I think counsel has stated the very reason this objection is valid, your Honors, because the Commis-

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sion in issuing its report and order on the application of this barge line had an entirely different record before it than it did in this case, and the findings contained in that report are based upon the record in that other case.

Judge Evans: We will receive the exhibits.

Mr. Hayes: That includes the offer of the order of No-
[fol. 3759] vember 6 and the order denying the application for administrative relief, and the certificate?

Judge Evans: Both.

(Whereupon, said documents were received in evidence as Intervening Plaintiff's Exhibits No. 1 and No. 2, respectively, and the same are in words and figures as follows:)

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Judge Evans: Anything further on the part of the plaintiffs or petitioning shippers?

Mr. Belnap: If the Court please, I shall present the case on behalf of the plaintiffs in No. 3714.

Judge Evans: Wait; is there any evidence to be offered, any further evidence?

Mr. Belnap: No.

Judge Evans: Is there any evidence on the other side?

Mr. Kunkel: We have nothing to offer.

Judge Evans: Has anybody got any further evidence? (No response.) Then the testimony is closed.

Mr. Belnap: The testimony is closed.

(Which was all of the evidence offered or received.)

(The matter was then argued.)

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Judge Evans: This case is one which will probably have to go to the Supreme Court, and we have given you the benefit of a rather extended argument, when as a matter of fact all you are looking for is some decision so that you can go on.

The argument has been really very interesting—not so much interesting, that isn't the exact word—it has been [fol. 3760] complicated and intricate, rather than interesting, to be perfectly frank.

We will give the best we can to you and try to dispose of it. It seems as though it is of such importance that the losing side will not abide by the decision until the Supreme Court has disposed of it. That is, if it is as clear as each side seems to think, this matter can be disposed of very quickly in the Supreme Court.

We will try to get it out as early as we can. We don't feel, having a duty to perform, even in the position we are in, being an intermediary step to the Supreme Court, we should dispose of it without some consideration.

Mr. Hayes: If your Honors please, we don't consider this decision as a pro-forma matter. The statute contemplates a three-judge court.

Judge Evans: That is the way we have to look at it.

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Mr. Belnap: Your Honors, I have for the plaintiff requested findings of fact and conclusions of law, which I would like leave to file, one for the record and three for the Court.

Judge Holly: Are there findings of fact and conclusions of law submitted by all the parties?

Mr. Kunkel: They haven't been prepared on behalf of the defendants.

Mr. Cole: We haven't prepared them yet.

Judge Evans: Get them in as soon as you can.

Mr. Kunkel: We will do so.

Judge Evans: Because we want to dispose of this as quickly as we can.

Mr. Kunkel: Will the Court allow us ten days for that purpose?

Mr. Belnap: May I call your attention to the fact the order becomes effective the 22nd of this month.

[fol. 3761] Mr. Cole: Today is the 6th.

Judge Evans: I think you ought to have it in in six days.

Mr. Hayes: The same for the intervening plaintiff?

Judge Evans: Yes. That will be all then.

(Which was all of the proceedings had in the hearing of the above entitled cause.)

[fol. 3762] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 3763] And on, to wit, the 16th day of April, A. D. 1942 came the Plaintiff by attorneys and filed in the Clerk's office of said Court its certain Exhibit No. 2 in words and figures following, to wit:

[fols. 3764-3765] PLAINTIFFS' EXHIBIT No. 2

Order

INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 4718

Grain Proportionals Ex-Barge to Official Territory

Re Request for Postponement of Effective Date of Order of December 1, 1941

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the request of the court in the above-entitled case that the effective date of the order of December 1, 1941, be further extended, and for good cause appearing:

It is ordered, That the order of this Commission of December 1, 1941, presently effective January 22, 1942, be,

and it is hereby modified so as to extend the effective date thereof to February 22, 1942.

Dated at Washington, D. C., this 10th day of January, A. D., 1942.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary.

A true copy.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 3766] INTERVENING PLAINTIFFS' EXHIBIT No. 1

INTERSTATE COMMERCE COMMISSION

No. W-630

A. L. Mechling Barge Line Common Carrier Application

Submitted October 1, 1941. Decided November 6, 1941

Applicant found entitled to continue operation as a common carrier by non-self-propelled carrying vessel in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana, Ill., by reason of having been engaged in such operation on January 1, 1940, and continuously since. Certificate of public convenience and necessity issued.

Edward B. Hayes for applicant.

Report of the Commission

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

By application filed May 29, 1941, A. L. Mechling, an individual doing business under the trade name and style of A. L. Mechling Barge Line, of Joliet, Ill., seeks a certificate of public convenience and necessity under section 309 (a) of the Interstate Commerce Act authorizing continuance of operation as a common carrier by water, in interstate or foreign commerce, in the transportation of grain and

soy beans between all points on the Illinois Waterway [1] and on the Mississippi River between Burlington, Iowa, and New Madrid, Mo., inclusive. No objection to the application has been offered.

The application for the authority sought is based in part upon the so-called "grandfather" clause of section 309 (a), which provides for the issuance of a certificate upon proof of bona fide operation on January 1, 1940, and continuously since. Such operation has been conducted between points on the Illinois Waterway north of and including Havana, Ill. The evidence submitted with the application establishes these rights, and a certificate will be issued authorizing the continuance of those operations. In addition applicant seeks authority to continue so-called "interim" operations south and west of Havana, which were begun between January 1, 1940, and February 1, 1941. To secure a certificate authorizing continuance of these latter operations, applicant must prove that they are or will be required by the present and future public convenience and necessity. The present record is insufficient to support this claim, and we will set this part of the application for hearing.

Applicant has been in operation since 1930. He owns and operates 7 towboats and 17 barges, and has under charter 4 other barges. He has transported soy beans and 7 kinds of grain in bulk during 1939, 1940, and 1941 from Havana, Pekin, Peoria, Chillicothe, Lacon, Henry, Hennepin, LaSalle, Ottawa, Seneca, Paytonville, and Morris, Ill., to Chicago. Shipments were also shown to Pekin in 1939. After reaching destination the commodities generally continue movement by rail or water carriers to points in other States or to foreign countries. On or before January 1, 1940, applicant served every grain shipper from every grain shipping point along this section of the Waterway. He has held himself out to serve all points along the Waterway and since the latter date has served points, other than those named, when the traffic became available. In view of these facts we conclude that applicant is a common carrier of grain and soy beans, and that he should be author-

[1] The Illinois Waterway consists of the Illinois River, the Des Plaines River from the Illinois River to the Sanitary and Ship Canal, the Sanitary and Ship Canal, the Chicago River and its branches, the Calumet-Sag Channel, Little Calumet River, and Calumet River.

ized to operate between all points on the Waterway north of and including Havana.

Applicant furnishes transportation by barge and we will limit his service to that type of operation. Classification of carriers in terms of their type of operation assures the public that the same type of service will be continued by them. In this manner the competitive balance of types of carriers over the same route will not be disrupted by changes which they might make without first securing from this Commission the necessary certificate of public convenience and necessity. We will, therefore, as a general policy employ such a classification in defining the operating rights of water carriers subject to part III of the act.

Although applicant has been transporting commodities in bulk, he does not claim exemption under section 303 (b) of the act, because practical operation requires transportation of more than three commodities in part of the tows.

We find that applicant was in bona fide operation on January 1, 1940, as a common carrier by non-self-propelled carrying vessels in interstate or foreign commerce, in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana; that such operation has been continued since that date; and that a certificate of public convenience and necessity should be issued authorizing continuation of such operation, subject to general conditions which are necessary to carry out, with respect to continuation of applicant's operations, the reqiurements of part III of the act, and the orders, rules, and regulations of the Commission thereunder.

An appropriate certificate will be issued.

[fol. 3767] CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 6th day of November, A. D. 1941

No. W-630

A. L. Mechling Barge Line Common Carrier Application

Investigation of the matters and things involved in this proceeding having been made, and said division having on

the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That public convenience and necessity require the continuation of operation by A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, as a common carrier by non-self-propelled carrying vessels, in interstate or foreign commerce, in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana, Ill.

It is ordered, That said carrier be, and he is hereby, authorized to perform the service specified above; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority.

It is further ordered, That the holding of this certificate by said carrier be, and it is hereby, conditioned upon the exercise of the authority specified above, and upon compliance by said carrier with the requirements of the act and the orders, rules, and regulations of the Commission thereunder.

It is further ordered, That this certificate shall take effect and be in force from and after 45 days from its date.

By the Commission, division 4.

W. P. Bartel, Secretary.

A true copy.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fols. 3768-3769] INTERVENING PLAINTIFF'S EXHIBIT No. 2

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

I. & S. No. 4718

Grain Proportionals Ex-Barge to Official Territory

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petitions

of A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, for leave to intervene and for rehearing and reconsideration, and of Finnegan Warehouse Company for reconsideration:

It is ordered, That the said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

A true copy: W. P. Bartel, Secretary of the Interstate Commerce Commission.

IN THE

District Court of the United States

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3714
Consolidated	
INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725

PLAINTIFFS' (APPELLEES') DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD DESIRED TO BE INCLUDED IN THE TRANSCRIPT OF RECORD.

Filed June 3, 1942.

TO THE CLERK OF THE ABOVE-NAMED COURT:

You are hereby requested in preparing a transcript of the record in the above-entitled causes to be filed in the Supreme Court of the United States, pursuant to the appeal allowed therein, to include in such transcript the following portions of the record in addi-

tion to those indicated by the defendants (appellants), to wit:

(1) Notice and motion of plaintiffs for preliminary injunction and supporting affidavit in No. 3714, filed January 26, 1942.

(2) Notice and motion of plaintiff for preliminary injunction and supporting affidavit in No. 3725, filed January 26, 1942.

(3) Reporter's transcript of proceedings at hearing on February 6, 1942.

(4) Plaintiffs' Exhibit No. 2.

(5) Intervening plaintiff A. L. Mechling's Exhibits Nos. 1 and 2.

(6) This designation of additional portions of the record.

NUEL D. BELNAP,
ROBERT N. BURCHMORE,
2106 Field Building,
Chicago, Illinois,
Attorneys for
Cargill, Incorporated,
Norris Grain Company,
Santa Fe Elevator Corporation,
Rosenbaum Brothers,
Continental Grain Company,
Inland Waterways Corporation.

EDWARD B. HAYES,
175 W. Jackson Blvd.,
Chicago, Illinois,
Attorney for A. L. Mechling, doing business as A. L. Mechling Barge Line.

AFFIDAVIT OF SERVICE.

Nuel D. Belnap, being first duly sworn, deposes and says: that he served copies of the foregoing designation of additional portions of the record desired to be included in the transcript of record upon the defendants in the above-entitled cause, by depositing the same in the United States mail, in sealed envelopes with proper postage prepaid, at Chicago, Illinois, on June 3, 1942, addressed to their attorneys of record, as listed on Defendants' (Appellants') Praecipe for Transcript of Record.

.....

NUEL D. BELNAP.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 3rd day of June, 1942.

.....

FLORENCE M. SULLIVAN,

(Seal) *Notary Public.*

My commission expires April 23, 1945.

[fols. 3778-3790] Bond on appeal for $250.00, approved June 3, 1942, omitted in printing.

[fol. 3791] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 3792] And on, to wit, the 25th day of May, A. D. 1942, there was in the Clerk's office of said Court a certain Citation in words and figures following, to wit:

1731

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION,
Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Defendants.

Civil Action
File No. 3725

CONSOLIDATED

CARGILL, INCORPORATED, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Defendants.

Civil Action
File No. 3714

CITATION ON APPEAL

To:

INLAND WATERWAYS CORPORATION; CARGILL, INCORPORATED; NORRIS GRAIN COMPANY; ROSENBAUM BROTHERS; SANTA FE ELEVATOR COMPANY; CONTINENTAL GRAIN COMPANY; THE SECRETARY OF AGRICULTURE; A. L. MECHLING, DOING BUSINESS AS A. L. MECHLING BARGE LINE, Plaintiffs,

GREETING:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States

in the City of Washington, District of Columbia, on the ..... day of June 1942, pursuant to an order filed and entered in the office of the District Court of the United States for the Northern District of Illinois, Eastern Division, allowing an appeal from a decree entered April 16, 1942, in the above-entitled causes, to show cause, if any there be, why said decree rendered against defendants-appellants should not be reversed and set aside and why justice should not be done in behalf of said defendants-appellants.

WITNESS, the Honorable .....,
District Court Judge for the United States District Court for the Northern District of Illinois, Eastern Division.

Dated May 21, 1942.

Holly

U. S. District Court Judge.

Service of the above citation on appeal and receipt of a copy thereof is hereby acknowledged this ..... day of May, 1942.

WALTER, BURCHMORE AND BELNAP,
ROBERT N. BURCHMORE and
NUEL D. BELNAP,
For Inland Waterways Corporation; Cargill, Incorporated; Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Company; Continental Grain Company.

HASKELL DONOHO,
For Secretary of Agriculture.

EDWARD B. HAYES,
For A. L. Mechling, doing business as A. L. Mechling Barge Line.

[fol. 3795] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE RECORD TO BE PRINTED—Filed July 9, 1942

Now comes the Interstate Commerce Commission, the Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railroad Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, appellants, and say that they will rely in brief and oral argument in the above-entitled cause upon the following points:

I. The lower court transcended its powers in passing upon administrative questions which have been exclusively committed to the jurisdiction of the Interstate Commerce [fol. 3796] Commission.

II. The carrying into effect of the national transportation policy is committed to the Interstate Commerce Commission and the lower court usurps the Commission's function in assuming to substitute its judgment for that of the Commission with respect to carrying out of that policy.

III. The lower court erred in weighing the evidence so as to arrive at subordinate factual findings contrary to those reached by the Interstate Commerce Commission upon the same evidence.

IV. The findings of the Interstate Commerce Commission were based upon substantial evidence and afforded a rational basis for its ultimate finding that the rates in ques-

tion did not offend against Sections 1, 2 and 3 of the Interstate Commerce Act.

V. The order of the Interstate Commerce Commission is free from any error of law in the construction and application of Sections 1, 2 and 3 of the Interstate Commerce Act to the situation presented by the record before the Commission.

VI. In considering the validity of proportional rates or rates in the nature of proportional rates under Sections 2 and 3 of the Interstate Commerce Act, the Interstate Commerce Commission may properly take into account the relative length and nature of the inbound and through service as a basis for a differentiation between such rates and the local rates from the proportional rate point.

VII. Appellees Inland Waterways Corporation and A. L. Mechling have no legal interest or standing which entitles them to bring and maintain this suit.

[fol. 3797] VIII. The carrier defendants were improperly joined in this suit.

IX. The specially-constituted three-judge court was without power to enjoin the carrier defendants from putting into effect the rates in question.

And said appellants hereby designate the following parts of the record considered by them necessary for the consideration of the points upon which they will rely:

All the items set out in defendants' praecipe for transcript of the record except Items 11, 19, 24, 27, 28, 29, 30, 31, and 32.

Dated June , 1942.

Daniel W. Knowlton, Daniel H. Kunkel, Frank H. Cole, Jr., Leo P. Day, Horace L. Walker, George Dyche, Lawrence Chaffee, Bryce L. Hamilton, A. B. Enoch, For Appellants.

[fol. 3798] City of Washington,
District of Columbia, ss.:

Daniel H. Kunkel being duly sworn according to law deposes and says that he is one of the attorneys of record

for the Interstate Commerce Commission, one of the appellants herein, and that he served copies of the above Statement upon all of appellees by depositing same, properly addressed to their respective attorneys of record in the United States mails at Washington, D. C., on the 9th day of July, 1942, in sealed, franked envelopes, said attorneys being:

Walter, Burchmore & Belnap, 2106 Field Building, Chicago, Illinois, For Inland Waterways Corp., Cargill, Inc., Norris Grain Company, Rosenbaum Bros., Santa Fe Elevator Company, and Continental Grain Company. Haskell Donoho, Esq., Department of Agriculture, Washington, D. C., For Secretary of Agriculture. Edward B. Hayes, Esq., 175 West Jackson Blvd., Chicago, Ill., For A. L. Mechling, doing business as A. L. Mechling Barge Line.

Daniel H. Kunkel.

Subscribed and sworn to before me, a Notary Public, in Washington, D. C., this 9th day of July, 1942. Eugenia W. Suter. (Seal.)

[File endorsement omitted.]

[fol. 3799] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLEES' DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE PRINTED—Filed July 20, 1942

Now comes Cargill, Incorporated, Norris Grain Company, Santa Fe Elevator Corporation, Rosenbaum Brothers, Continental Grain Company, Inland Waterways Corporation, and A. L. Mechling, doing business as A. L. Mechling Barge Line, appellees, to designate the following additional parts of the record considered by them necessary for the consideration of the points upon which appellants have stated they will rely:

In plaintiffs' (appellees') praecipe for transcript of record Item (3), Item (4), Item (5), and that portion of Item

(2) which consists of the supporting affidavit in No. 3725 in the District Court.

Dated July 17, 1942.

Nuel D. Belnap, Luther M. Walter, Edward B. Hayes, Attorneys for Appellees.

Affidavit

County of Cook,
State of Illinois, ss.:

Edward B. Hayes, being first duly sworn, deposes and says that he is one of the attorneys of record for A. L. Mechling, doing business as A. L. Mechling Barge Line, one of the appellees herein, and that he served copies of the above designation upon all of the appellants by depositing same, properly addressed, to their respective attorneys of record, in the United States mails at Chicago, Illinois, on [fol. 3800] the 17th day of July, 1942, in sealed envelopes, first-class postage prepaid, said attorneys being—

Mr. S. R. Brittingham, Jr., Special Assistant to the Attorney General of the United States, Department of Justice, Washington, D. C. Mr. Daniel W. Knowlton, Chief Counsel, Bureau of Law, Interstate Commerce Commission, Washington, D. C. Mr. Daniel H. Kunkel, Attorney, Interstate Commerce Commission, Washington, D. C. Mr. Frank H. Cole, Jr., Com. Atty., The Baltimore & Ohio R. R. Co., 1315 Union Central Life Bldg., Cincinnati, Ohio. Mr. Leo P. Day, Attorney, New York Central System, 525 La Salle Street Station, Chicago, Illinois. Mr. Horace L. Walker, Gen'l Sol'r., Chesapeake & Ohio Railway Co., 823 E. Main Street, Richmond, Virginia. Mr. George F. Dyche, Attorney, Pennsylvania Railroad Company, 625 Union Station, Chicago, Illinois. Mr. Lawrence Chaffee, Gen. Atty., The Chesapeake & Ohio Ry. Co., Richmond, Va. Mr. Bryce L. Hamilton, Attorney, The N. Y. C. & St. L. R. R. Co., 1400 First National Bank Bldg., Chicago, Illinois. Mr. A. B. Enoch, Ass't Gen'l Sol'r., Chicago, Rock Island & Pacific R. R. Co., 1025 La Salle Street Station, Chicago, Illinois. Mr. Haskel Donoho, Senior Attorney, United States Department of Agriculture, Washington, D. C.

Edward B. Hayes.

Subscribed and sworn to before me, a Notary Public, in Chicago, Illinois, this 17th day of July, 1942. Florence M. Sullivan. My commission expires April 23, 1945. (Seal.)

[fol. 3801] In Supreme Court of the United States

Stipulation re Printing Record—Filed October 6, 1942

In amendment to appellant's designation of portions of the record to be printed and appellees' designation of additional portions of the record to be printed, heretofore filed in this cause, it is hereby stipulated by and between counsel for the appellants and counsel for the appellees in the above-entitled cause that:

1. The following exhibits before the Interstate Commerce Commission shall be included in the printed record: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 19 (1st 8 pages), 38, 45, 59, 61, 63, 67, 68 (1st 3 pages), 69, 96, 98, 99, 70, 71, 72, 74, 75, 76, 77, 81, and the balance of the exhibits before the Commission which were transmitted in original form as introduced in the court below by the clerk of said court to the Clerk of this Court, shall not be printed as part of the record in this cause, but shall be retained as part of said record and may be referred to by the Court and by counsel for the parties in their briefs and arguments in this cause.

[fol. 3802] 2. Appendices A, B, and C of the complaint of Cargill, Incorporated, et al., are identical, respectively, to appendices A, B, and D of the complaint of Inland Waterways Corporation, being, respectively, copies of the Interstate Commerce Commission's order of October 14, 1939, its report of July 31, 1941, and its report and order of December 1, 1941, all in I. & S. Docket No. 4718. Said appendices A, B, and D shall be printed as they appear in the complaint of Inland Waterways Corporation, but appendices A, B, and C of the complaint of Cargill, Incorporated, et al., shall be omitted in printing with appropriate statement of the omission and reference to said appendices in the printed record.

It is understood that by this stipulation none of the parties is foreclosed from later contending that unnecessary parts of the record may have been printed.

Dated October —, 1942.

Bryce L. Hamilton, A. B. Enoch, La Salle St. Station, Chicago, Ill., Attorneys for The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thompson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company.

Daniel W. Knowlton, Chief Counsel.

Daniel H. Kunkel, Attorney for Interstate Commerce Commission.

Frank H. Cole, Jr., Leo P. Day, George Dyche. [fol. 3803]Nuel D. Belnap, Luther M. Walter, Edward B. Hayes, Attorneys for appellees.

Lawrence Chaffee, Atorneys for The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and The Chesapeake and Ohio Railway Company.

[fol. 3803a] [File endorsement omitted.]

[fol. 3804] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 175

ORDER NOTING PROBABLE JURISDICTION—October 12, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Daniel W. Knowlton. File No. 46,669. N. Illinois, D. C. U. S., Term No. 175. The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, et al., Appellants, vs. Inland Waterways Corporation, Cargill, Incorporated, Norris Grain Company, et al. Filed June 24, 1942. Term No. 175 O. T. 1942.

CLERK'S COPY.

EXHIBITS

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 175

THE INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JUNE 24, 1942.

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I&S Docket 4718
Exhibit No. 71
Witness Farmer

Statement showing in chronological order the tariff provisions applicable in connection with Proportional rates on Grain, carload, published from Chicago, Ill. to destinations in Central Freight Association, (pages 1 to 9 incl.) Trunk Line and New England Territories, pages 10 to 27 incl.

	PART 1. PROVISIONS APPLICABLE IN CONNECTION WITH RATES TO CENTRAL TERRITORY.
Effective March 15, 1910. L.S.& M.S. Ry. Tariff I.C.C.No. A-2504.	Item 6-Rates named in column headed Item 6, will apply from Chicago, Grand Crossing, So. Chicago, Ill., Whiting and Indiana Harbor, Ind., on Grain, when originating at all points in Arizona, Arkansas, Colorado, Kansas, Mexico, Nebraska, New Mexico, Oklahoma, Texas, Utah and Wyoming and points in Iowa and Missouri from which no through rates are in effect. From all points in Idaho, when billed via Missouri River crossings, viz: Atchison, Kan., Council Bluffs, Ia., Kansas City, Mo., Kansas City and Levenworth, Kans., Nebraska City, Neb., Omaha, Neb., Pacific Jct., Ia., St Joseph, Mo., Sioux City, Ia., and So. Omaha, Nebr. From points in Minnesota, viz: Adrian, Ash Creek, Beaver Creek, Bigelow, Bruce, Ellsworth, Hills, Kanaranzi, Luverne, Magnolia, Round Lake, Rushmore, Sioux Falls Jct., Steen, Warner and Worthington. From points in the Dakotas, on the C.B.& Q.R.R., also Lead City and Sioux Falls, S.D., and points in So. Dakota, viz: Shindler (on C.R.I.& P.Ry.), Canton, Elk Point, Fairview, Harrisburg, Hudson, Jefferson, Mc Cook (on C.M.& St.P.Ry.), Brandon, Valley Spring (On C.St.P.M& O.Ry.), Ben Clare, E.Sioux Falls and Wowena (on I.C.R.R.), Belle Fourche, Black Hawk, Blacktail, Bonesteel, Brennan, Buffalo Gap, Burke, Burke Siding, Central City, Crown Hill, Dallas, Deadwood, Evans Siding, Fairburn, Fairfax, Gregory, Hermosa, Herrick, Hot Springs, Lead, Oelrichs, Piedmont, Portland, Rapid City, Smithwick, St. Charles, St. Onge, Sturgis, Terry, Tilford, Wayside, Whitewood, S.D. (C.& N.W.Ry.) From points in Montana, when routed via Missouri River Crossings, viz: Atchison, Kan., Council Bluffs, Iowa, Kansas City, Mo., Kansas City and Leavenworth, Kan., Nebraska City, Neb., Omaha, Neb., Pacific Jct., Ia., St Joseph, Mo., Sioux City, Ia., and So. Omaha, Neb. Item 7-Rates named in column headed Item 7, will apply from Chicago, Englewood, Grand Crossing, So. Chicago, Ill., Whiting and Indiana Harbor, Ind., on Grain, when originating in territory described below, and also when received by boat. From points in Wisconsin from which no through rates are in effect. From points in the Upper Peninsula of Michigan. From points in Idaho,, the Dakotas, Minnesota and Montana, except as provided in Item 6.
Effective March 15, 1913. L.S.& M.S. Ry. Tariff I.C.C.No. A-2915.	Note 2-Reshipping - Rates named in column headed Note 2 are reshipping or proportional, applying from Chicago, Englewood, Grand Crossing, So. Chicago, Ill., Whiting and Indiana Harbor, Ind., on Grain, in carloads, originating at points from which no through joint rates are in effect, except as provided in columns headed Notes 3 and 4, and will also apply on Grain originating in same territory, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission. Note 3-Trans-Mississippi River - Rates named in column headed Note 3, will apply from Chicago, Englewood, Grand Crossing, So. Chicago, Ill., Whiting and Indiana Harbor, Ind., on Grain when originating at points in Trans-Mississippi River territory as described in Territorial Directory No.3, I.C.C.No.305, (L.S.& M.S. Joint G.F.D.No.2097-A) supplements thereto and reissues thereof, issued by Eugene Morris, Agent, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.

Effective March 15, 1913. L.S.& M.S Ry.Tariff I.C.C.No. A-2915.

Note 4-Northwest - Rates named in column headed Note 4,will apply from Chicago,Englewood,Grand Crossing,So.Chicago,Ill., Whiting and Indiana Harbor,Ind.,on Grain,in carloads, when originating in the following described territory from which no through joint rates are in effect.

(a) From points in Wisconsin.
(b) From points in the Upper Peninsula of Michigan.
(c) From points west of the Minnesota-Wisconsin State line,except as provided for in Note 3.
(d) On shipments which arrive by boat lines,originating at any of the points in the above defined territory.

Effective November 16,1914. L.S.& M.S. Ry.Tariff I.C.C.No. A-3238, Supp.1.

The following additional reshipping application was added to the above:

Note 2½-Rates named in column headed Note 2½ are reshipping or proportional,applying from Chicago,Englewood,Grand Crossing,So.Chicago,Ill.,Whiting and Indiana Harbor,Ind. on Grain in carloads,originating at points named in Note A below,and will also apply on Grain originating in same territory, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.

Note A:

Alexandria	Mo.	Garden City	Ia.	Montrose	Ia.
Ashburn	"	Gordon's Ferry	"	Mooar	"
Ballinger	Ia	Grand View	"	Moody	Mo.
Bard	"	Green Island	"	Morning Sun	Ia.
Beck	"	Gregory	Mo.	Muscatine	"
Bellevue	"	Hahn's Switch	Ia.	Oakville	"
Bettendorf	"	Hannibal	Mo.	Patterson	"
Buffalo	"	Helton	Ia.	Pleasant Creek	"
Bullard	"	Huron	"	Pleasant Valley	"
Burlington	"	Ilasco	Mo.	Princeton	"
Busch	Mo.	Kemper	Ia	Reading	Mo.
Camanche	Ia	Keokuk	Ia	Round House	Ia.
Canton	Mo	Kingston	Ia	St Louis	Mo.
Clemens	Ia	La Grange	Mo	Sabula	Ia
Clinton	"	Lambs	"	Sandusky	"
Columbus Jct	"	La Motte	"	Santuzza	Mo.
Dubuque	"	Latty	Ia	Saverton	"
Elk River Jct	"	Letts	"	Sperry	"
Elrick Jct	"	Linton	"	Tile Works	"
Fairport	"	Louisiana	Mo.	Viele	"
Folletts	"	Love	"	Wapello	"
Ft Madison	"	Lyons	Ia	W.Burlington	"
Fredonia	"	Mediapolis	"	W.Quincy	"
Fruitland	"	Middle Lock	"	Wever	Ia
Gallant	"	Montpelier	"	White Rock	Mo.

and effective September 15, 1915, in supplement 9, to L.S.& M.S.Ry. I.C.C.No.A-3238, Note 2½ was cancelled referring to Note 2 (Reshipping) rates to apply.

Effective November 1,1916. N.Y.C. R.R. Tariff I.C.C.-L.S.No. 300.

Note 3-Reshipping - Rates named in column headed Note 3,are reshipping or proportional, applying from stations shown on page 5,taking group 1 rates,on Grain,in carloads,originating at points from which no through joint rates are in effect, except as provided for in columns headed Notes 4 and 5,and will alsoapply on Grain originating in same territory,handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.

Effective November 1,1916. N.Y.C. R.R. Tariff I.C.C.-L.S.No. 300.	Note 4-Trans-Mississippi River - Rates named in column headed Note 4,will apply from stations shown on page 5, taking Group 1 rates, on Grain,in carloads,when originating at points in Trans-Mississippi River Territory as described in Territorial Directory No.3-B,I.C.C.No. 526,G.F.D.-L.S.No.112,supplements thereto and reissues thereop,issued by Eugene Morris,Agent,handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission,also on through consignments of Grain, from Trans-Mississippi River territory,except as otherwise specifically provided therein. Will also apply on Grain,from Delmar,Kankakee, Momence,Ill.,and Schneider,Ind.,originating at points from which no through rates are in effect. Note 5-Northwest - Rates named in column headed Note 5, will apply from stations shown on page 5,taking Group 1 rates,on Grain,in carloads,when originating in the following described territory from which no through joint rates are in effect. (a) From points in Wisconsin. (b) From points in the Upper Peninsula of Michigan. (c) From points west of the Minnesota-Wisconsin State line,except as provided for in Note 4. (d) On shipments which arrive by boat lines at stations shown on page 5,Chicago,Ill.(index 1)to Indiana Harbor,Ind.(index 7),inclusive, originating at any of the points in the above defined territory.
Effective May 1, 1924. N.Y.C. R.R. Tariff I.C.C.-L.S.1072, Supp.8.	Note 15-A Reshipping - Rates named on pages 45 to 57 inc. of tariff,in column headed Note 15,apply from stations shown in Note 60,taking group 1 rates,on Grain,in carloads, and are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points,except as provided for in Notes 20-A and 25-A,from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination;provided,that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom. These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission. Rates also apply on through billed shipments originating at points in territory as described in this Note,from which no joint through commodity rates are in effect,not stopped in transit at reshipping points subject to this application. Note 20-A Trans-Mississippi River - Rates named on pages 45 to 57 inc.of tariff headed Note 20,apply from stations shown in Note 60,taking Group 1 rates,on Grain,in carloads and are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill of like documentary evidence as to the origin of traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Trans-Mississippi River territory as described in Territorial Directory No.3-D,I.C.C.No.1151,G.F.D.-L.S.No.112-B supplements thereto and reissues thereof,issued by B.T. Jones,Agent,from which no joint through commdoity rates

are in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination, provided that in no case shall the combination through rate to and from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note from which no joint through commodity rates are in effect, not stopped in transit at reshipping points subject to this application, except as otherwise specifically provided in tariff as amended.

Effective May 1, 1924. N.Y.C. R.R. Tariff I.C.C.-L.S.1072, Supp.8

Note 25-A Northwest - Rates named on pages 45 to 57 inc., of tariff, in column headed Note 25, apply from stations shown in Note 60, taking Group 1 rates on Grain, in carloads, and are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of traffic and rate paid to the reshipping point and will only apply on such traffic when originating in the following described territory:

Points in Wisconsin.
Points in the Upper Peninsula of Michigan.
Points west of the Minnesota-Wisconsin State Line, except as provided for in Note 20A.
Points in the Dominion of Canada, viz: All points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.
On shipments which arrive by boat lines at stations shown in Note 60, Chicago, Ill. to Indiana Harbor, Ind. inclusive, originating at any points in the above defined territory.

from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at reshipping points subject to this application.

Effective June 28, 1935. Agent B.T. Jones Tariff I.C.C. 2790.

Note 30. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN TRANS-MISSISSIPPI RIVER TERRITORY

Where reference is made to this note rates will apply as follows:

Rates subject to the provisions of this Note, are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in **Trans-Mississippi River Territory** (as described in this Note); provided, that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rates therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note not stopped in transit at reshipping points subject to this application.

Exception 1.—Rate will not apply from Peoria, Ill., and points taking same rates on traffic subject to Note 50, page 87.

Exception 2 - Rate will not apply from Chicago,E.Joliet,Kankakee, Ill.,Kewaunee,Wis.,Mackinaw City,Mich.,Manitowoc,Wis.,Maniatique, Menominee,Mich.,Milwaukee,Wis.,or Peoria,Ill., and points taking same rates on traffic subject to Note 50,page 91.

TRANS-MISSISSIPPI RIVER TERRITORY

ARIZONA—Stations as follows:

Acacia	Calva	Enid	Humboldt	Fan	Solomon
Aguila	Canelo	Ernan	Huron	Parker	South Siding
Allah	Cavot	Escala	Kelvin	Patagonia	Stark
Alrich	C. sador	Fields	Kendall	Peterson	Stoval
Alto	Chandler	Florence	Kim	Pica	Sunshine
Anita	Charleston	Flores	Kingdon	Piedra	Tanque
Apache	Chiricahua	Flux	Kiser	Pinal	Tempe
Apex	Claypool	Forepaugh	Lancha	Pitt	Theba
Arizona City	Clifton	Forrest	Lee	Poland Jct	Thomson
Arkill	Cochran	Fortuna	Lewis Springs	Pulvo	Tombstone
Asher	Coledon	Frankenburg	Larim	Prairie	Topock
Ashurst	Concomac	Gael	Lone Star	Price	Tovrea
Audley	Congress	Gila	Lowell	Prieta	Utting
Bawtry	Contention	Gilbert	McQueen	Puntenney	Vail
Bernardino	Cordes	Glauber	Magma	Queen Creek	Valle
Bisbee Jct	Creamery	Golden	Marana	Quevero	Vanar
Blue Bell	Crook	Grand Canyon	Miami	Radium	Vicksburg
Bon	Danny	Granite Spur	Mobile	Rankin	Warren
Bouse	Divide	Guthrie	Mohawk	Red Lake	Weeden
Brananan	Doce	Haeckel	Montrose	Saddle	Willaha
Buchan	Dome	Hanan	Mum	St. Davids	Winkleman
Burch	Don Luis	Hayden	Naco	Salome	Wooley
Burns	Douglas	Helena	Naches	San Pedro	York
Butler	Drury	Hereford	Navajo	San Simon	Zellweger
Bylas	Duncan	Higley	Ocatilla	Sheldon	
Calumet	Eloy	Hops			

ARKANSAS—All Stations.

COLORADO—All stations.

IDAHO—All stations when routed via Missouri River Crossings (named in Note 66, page 89).

IOWA—All stations except the following:

Becks	Clinton	Green Island	Montrose	Sandusky
Bellevue	Davenport	Hurst's Mill Spur	Moour	Shaffton
Bettendorf	Dubuque	Kemper	Muscatine	Shupton
Brisker	Elk River Jct	Keokuk	Patterson	Spring Grove
Buffalo	Fairport	Le Claire	Pleasant Creek	Tile Works
Ballard	Ft Madison	Linwood	Pleasant Valley	Viele
Burlington	Galland	Lyons	Princeton	West Burlington
Camanche	Gordon's Ferry	Montpelier	Sabula	West Keithsburg
				Wever

KANSAS—All stations.

MEXICO—All stations.

Effective June 28, 1935. Agent B.T. Jones Tariff I.C.C. 2790.

MISSOURI—All stations except the following:

Alexandria	Gregory	LaGrange	Mark	St. Louis
Ashburn	Hannibal	Lamb	Munger's Switch	Staverton
Bunch	Helton	LaMotte	Reading	West Quincy
Canton	Huiskamp	Louisiana	Riverland	White Rock
Fenway	Ilasco Jct			

MONTANA—All stations when routed via Missouri River Crossings (named in Note 66, page 89).

NEBRASKA—All stations.

NEW MEXICO—All stations.

OKLAHOMA—All stations.

OREGON—Stations as follows when routed via Missouri River Crossings (named in Note 66, page 89)

Arcadia	Huntington	Nyssa	Ontario	Vale
Cairo	Mallett			

SOUTH DAKOTA—Stations as follows:

Alcester	Cottonwood	Hill City	Manito-Mackenzie	Siding No. 11
Alexandria	Creston	Hills Siding	Murphy	Sioux Falls
Alpena	Crooks	Hooker	Mystic	Smithwick
Ardmore	Custer	Hot Springs	Nahant	Spencer
Argonne	Cuthbert	Howard	Naoma	Springfield
Argyle	Dallas	Hudson	Newell	Stamford
Armour	Dante	Humboldt	Nisland	Stickney
Artesian	Davis	Huntimer	Nowlin	Sturgis
Asylum Track	Deadwood	Hurley	Oacoma	Tabor
Avon	Dell Rapids	Imlay	O D Siding	Talmo
Baltic	Delmont	Interior	Oelrichs	Teton
Beardsley	Dewey	Ireco	Okaton	Tilford
Belle Fourche	Dimock	Ivanhoe	Oldham	Trent
Belvidere	Dolton	Jacquet	Oral	Tripp
Benclare	Draper	Jefferson	Oroville	Trojan
Beresford	Dumont	Junius	Owanka	Tuscan
Berne	East Sioux Falls	Kadoka	Parker	Tyler
Betts	Edgemont	Kaylor	Parkston	Tyndall
Black Hawk	Egan	Kennebec	Peaks	Underwood
Blacktail	Elk Point	Keystone	Philip	Unityville
Bonesteel	Ellis	Kimball	Piedmont	Utica
Bonge	Emery	Kingsburg	Plankinton	Vale
Box Elder	Englewood	Kirk	Platte	Valley Springs
Bovee	Erskine	Lake Andes	Pluma	Van Metre
Brandon	Esmond	Lane	Plumb	Vermillion
Bridgewater	Ethan	Lead	Powell	Viborg
Buena Vista	Evans Siding	Lemmon	Presho	Vilas
Buffalo Gap	Fairburn	Lesterville	Pringle	Virgil
Burbank	Fairfax	Letcher	Provo	Vivian
Burdock	Fairview	Loomis	Pukwana	Volin
Burke	Farmer	Loring	Quinn	Wagner
Burton	Farmingdale	Lyman	Ramona	Wakonda
Canastota	Fedora	Lyons	Rapid City	Wall
Canova	Fish & Hunter Spur	McCook	Ravinia	Wasp No. 2 Spur
Canton	Flandreau	Madison	Red Fern	Wasta
Cape	Forestburg	Marietta	Red Water Siding	Wendte
Capute	Fort Pierre	Marion Jct.	Reliance	Wentworth
Carthage	Freeman	Mayo	Renner	Wessington Springs
Centerville	Frutdale	Merkling	Riverside	Weta
Central City	Fullerville	Mesmo	Rockford	White Lake
Chamberlain	Fulton	Midland	Roswell	Whitewood
Chancellor	Garretson	Minnekahta	Rowena	Winfred
Chester	Gayville	Mimmo Hill	Rumford	Winner
Chilson	Geddes	Mitchell	St. Charles	Witten
Colman	Gregory	Monroe	St. Onge	Wood
Colome	Harrisburg	Montrose	Salem	Woonsocket
Colton	Hartford	Morefield	Scenic	Worthing
Comato	Haskin	Mosher	Scotland	Yankton
Corwea	Hermosa	Mt. Vernon	Shandlar	
Corson	Herrick			

TEXAS—All stations.

UTAH—All stations.

WYOMING—All stations.

Note 45. **APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY**

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 73), originating in the following described territory:

(a) Points in Wisconsin.
(b) Points in Upper Peninsula of Michigan.
(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78.
(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.
(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

NOTE 45.

RESHIPPING
APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line ~~(except Illinois Grain moving via water transportation line)~~ that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

Effective June 28, 1935. Agent B.T. Jones Tariff I.C.C. 2790.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A-1 **Rates on Grain** (see Note 5, page 71), from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., and Milwaukee, Wis., and points taking same rates as shown on pages 8 to 11, inclusive, subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 77 and 78), or Northwest Territory (see Note 40, page 87).

A-2 **Rates on Grain Products** (see Note 10, pages 73 and 74), from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., Milwaukee, Wis., and points taking same rates as shown on pages 8 to 11, inclusive, subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 77 and 78) or Northwest Territory (see Note 40, page 87).

B-1 **Rates on Grain** (see Note 5, page 71), from Peoria, Ill., and points taking same rates as shown on pages 8 to 11, inclusive (except as provided in paragraph B-2 hereof), subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 77 and 78), or Northern Iowa Territory (see Note 30) or Northwest Territory (see Note 40, page 87).

B-2 **Rates on Grain** (see Note 5, page 71), from Peoria, Ill., subject to the provisions of this Note will apply from Peoria, Bloomington, Crescent, Pekin, South Bartonville and Springfield, Ill., only as follows:

(a) As proportional or reshipping rates on shipments originating at stations shown in tariffs named in Note A, page 68, supplements thereto or successive issues thereof, from which proportional rates are published to Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and only when such proportional rates are assessed into Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and when the grain is destined to the following points:

Bellaire	Ohio	Crabtree	Pa.	Irvington	Pa.	Oil City	Pa.
Belle Vernon	Pa.	Dunkirk	N.Y.	Jacobs Creek	Pa.	Parkersburg	W.Va.
Bessemer	Pa.	East Buffalo	N.Y.	Johnstown	Pa.	Pittsburgh	Pa.
Black Rock	N.Y.	Elizabeth	Pa.	Laurel Run	Pa.	Point Pleasant	W.Va.
Blairsville	Pa.	Elkwood City	Pa.	Masontown	Pa.	Ravenswood	W.Va.
Bridgeport	Ohio	Erie	Pa.	Marvell	Pa.	Salamanca	N.Y.
Brownsville	Pa.	Fairchance	Pa.	Monongahela	Pa.	Suspension Bridge	N.Y.
Buffalo	N.Y.	Gauley Bridge	W.Va.	Moundsville	W.Va.	Tiltonville	Pa.
Charleston	W.Va.	Grafton	W.Va.	New Martinsville	W.Va.	Washington	Pa.
Connellsville	Pa.	Huntington	W.Va.	Niagara Falls	N.Y.	West Newton	Pa.
Corry	Pa.	Indiana	Pa.	North Tonawanda	N.Y.	Wheeling	W.Va.

and points taking same rates or arbitraries higher as shown in CFATB Freight Tariff No. 470 I.C.C. No. 2486 also points taking same rates as listed on pages 14 to 72 inclusive.

The first paragraph of Note 45, was corrected to read as follows:

Effective August 25, 1935. Agent B.T. Jones, Tariff I.C.C. 2790, Supplement 2.

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line) that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

The following paragraph was added to Note 45:

Effective February 5, 1939. Agent B.T. Jones, Tariff I.C.C. 2790, Supplement 49.

(b) As proportional or reshipping rates on shipments originating at points beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 77 and 78 of tariff, as amended) or traffic covered by paragraph (a), Section B-2 of this note.

Note 20 (Amended)

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN TRANS-MISSISSIPPI RIVER TERRITORY

Where reference is made to this note rates will apply as follows:

♦Rates subject to the provisions of this Note, are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in **Trans-Mississippi River Territory** (as described in this Note); provided, that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rates therefrom.

Rates will also apply on shipments moving from Kansas City, Mo., to Chicago, Ill., or Peoria, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I C C No. 148; supplements thereto or successive issues thereof.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note not stopped in transit at reshipping points subject to this application.

Exception 1.—Rate will not apply from Peoria, Ill., and points taking same rates on traffic subject to Note 50, page 87 of tariff.

Note 40 (Amended)

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways.)

These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Effective September 15, 1938. Agent S.F. Jones Tariff I.C.C. 3300 Supplement 4.

Note 45 (Amended)

RESHIPPING

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Except as otherwise provided in tariff, as amended, rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will **only apply** on such traffic when originating at points in the territory as described below, provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference **necessary** to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co., Tariff No. 41-O, I C C No. 66 and Spring Lake Packet Co., Tariff No. 41-N, I C C No. 59, supplements thereto or successive issues thereof.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

The effective date of Supplement 4 was POSTPONED until October 15,1939.

NOTE 20

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN TRANS-MISSISSIPPI RIVER TERRITORY

Where reference is made to this note rates will apply as follows:

♦Rates subject to the provisions of this Note, are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail †† transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in **Trans-Mississippi River Territory** (as described in this Note); provided, that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rates therefrom.

Rates will also apply on shipments moving from Kansas City, Mo., to Chicago, Ill., or Peoria, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I C C No. 148; supplements thereto or successive issues thereof.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note not stopped in transit at reshipping points subject to this application.

Exception 1.—Rate will not apply from Peoria, Ill., and points taking same rates on traffic subject to Note 50, page 87 of tariff.

Effective September 15, 1939. Agent S.F. Jones Tariff I.C.C. 3300, Supplement 7.

TRANS-MISSISSIPPI RIVER TERRITORY

ARIZONA—Stations as follows:

Acacia
Aguila
Allah
Airtch
Alto
Anita
Apache
Apex
Arizona City
Arkill
Asher
Auburst
Audley
Bawtry
Bernardino
Biebee Jct.
Blue Bell
Bon
Bouse
Branaman
Buchan
Burch
Burns
Buttes
Bylas
Calumet
Calva
Canelo
Cavot
Casador
Chandler
Charleston
Chiricahua
Claypool
Clifton
Cochran
Coledon
Conconino
Congress
Contention
Cordes
Creamery
Crook
Denny
Divide
Doce
Dome
Dos Luis
Douglas
Drury
Duncan
Eloy
Enid
Erman
Escala
Fields
Florence
Flores
Flux
Forepaugh
Forrest
Fortuna
Frankenburg
Gael
Gila
Gilbert
Glenbar
Golden
Grand Canyon
Granite Spur
Guthrie
Haeckel
Hamm
Hayden
Helena
Hereford
Higley
Hopi
Humboldt
Huron
Kelvin
Kendall
Kim
Kingdon
Kiser
Lancha
Lee
Lewis Springs
Lirim
Lone Star
Lowell
McQueen
Magma
Marana
Miami
Mobile
Mohawk
Montrose
Munn
Naco
Naches
Navajo
Ocatilla
Pan
Parker
Patagonia
Peterson
Pica
Piedra
Pinal
Pitt
Poland Jct
Polvo
Prairie
Price
Prieta
Puntenney
Queen Creek
Quivero
Radium
Rankin
Red Lake
Saddle
St. Davids
Salome
San Pedro
San Simon
Sheldon
Solomon
South Siding
Stark
Stoval
Sunshine
Tanque
Tempe
Theba
Thomson
Tombstone
Topock
Tovrea
Utting
Vail
Valle
Vanar
Vicksburg
Warren
Wenden
Willaha
Winkleman
Wooley
Y k
Zellweger

ARKANSAS—**All Stations.**
COLORADO—**All stations.**
IDAHO—**All stations when routed via Missouri River Crossings (named in Note 65, page 89 of tariff).**
IOWA—**All stations except the following:**

Becks
Bellevue
Bettendorf
Bricker
Buffalo
Bullard
Burlington
Camanche
Clinton
Davenport
Dubuque
Elk River Jct
Fairport
Ft Madison
Galland
Gordon's Ferry
Green Island
Hurst's Mill Spur
Kemper
Keokuk
Le Claire
Linwood
Lyons
Montpelier
Montrose
Moonr
Muscatine
Patterson
Pleasant Creek
Pleasant Valley
Princeton
Sabula
Sandusky
Shaffton
Shopton
Spring Grove
Tile Works
Viele
West Burlington
West Keithsburg
Wever

KANSAS—**All stations.**
MEXICO—**All stations.**
MISSOURI—**All stations except the following:**

Alexandria
Ashburn
Busch
Canton
Fenway
Gregory
Hannibal
Helton
Huiskamp
Ilasco Jct.
LaGrange
Lamb
LaMotte
Louisiana
Mark
Munger's Switch
Reading
Riverland
St Louis
Saverton
West Quincy
White Rock

MONTANA—**All stations when routed via Missouri River Crossings (named in Note 65, page 89 of tariff).**
NEBRASKA—**All stations.**
NEW MEXICO—**All stations.**
OKLAHOMA—**All stations.**
OREGON—**Stations as follows when routed via Missouri River Crossings (named in Note 65, page 89 of tariff):**

Arcadia
Cairo
Huntington
Mallett
Nyssa
Ontario
Vale

SOUTH DAKOTA—**Stations as follows:**

Alcester
Alexandria
Alpena
Ardmore
Argonne
Argyle
Armour
Artesian
Asylum Track
Avon
Baltic
Beardsley
Belle Fourche
Belvidere
Benclare
Beresford
Berne
Betts
Black Hawk
Blacktail
Bonesteel
Booge
Box Elder
Bovee
Brandon
Bridgewater
Buena Vista
Buffalo Gap
Burbank
Burdock
Burke
Burton
Canistota
Canova
Canton
Capa
Caputa
Carthage
Centerville
Central City
Chamberlain
Chancellor
Chester
Chilson
Colman
Colome
Colton
Conato
Corsica
Corson
Cottonwood
Creston
Crooks
Custer
Cuthbert
Dallas
Dante
Davis
Deadwood
Dell Rapids
Delmont
Dewey
Dimock
Dolton
Draper
Dumont
East Sioux Falls
Edgemont
Egan
Elk Point
Ellis
Emery
Englewood
Erskine
Esmond
Ethan
Evans Siding
Fairburn
Fairfax
Fairview
Farmer
Farmingdale
Fedora
Fish & Hunter Spur
Flandreau
Forestburg
Fort Pierre
Freeman
Fruitdale
Fullerville
Fulton
Garretson
Gayville
Geddes
Gregory
Harrisburg
Hartford
Henkin
Hermosa
Herrick
Hill City
Hills Siding
Hooker
Hot Springs
Howard
Hudson
Humboldt
Huntimer
Hurley
Imlay
Interior
Irene
Ivanhoe
Janousek
Jefferson
Junius
Kadoka
Kaylor
Kennebec
Keystone
Kimball
Kingsburg
Kirk
Lake Andes
Lane
Lead
Lennox
Lesterville
Letcher
Loomis
Loring
Lyman
Lyons
McCook
Madison
Marietta
Marion Jct.
Mayo
Meckling
Menno
Midland
Minnekahta
Mission Hill
Mitchell
Monroe
Montrose
Morefield
Mosher
Mt Vernon
Mc Le-MacKenzie
Murphy
Mystic
Nahant
Naomi
Newell
Nisland
Nowlin
Oacoma
O D Siding
Odricha
Okaton
Oldham
Oral
Oreville
Owanka
Parker
Parkston
Peaks
Philip
Piedmont
Plankinton
Platte
Pluma
Plumb
Powell
Presho
Pringle
Provo
Pukwano
Quinn
Ramona
Rapid City
Ravina
Red Fern
Red Water Siding
Reliance
Renner
Riverside
Rochford
Roswell
Rowena
Rumford
St Charles
St Onge
Salem
Scenic
Scotland
Shindler
Siding No 11
Sioux Falls
Smithwick
Spencer
Springfield
Stamford
Stickney
Sturgis
Tabor
Talmo
Teton
Tilford
Trent
Tripp
Trojan
Tuscan
Tyler
Tyndall
Underwood
Unityville
Utica
Vale
Valley Springs
Van Metre
Vermillion
Viborg
Vilas
Virgil
Vivian
Volin
Wagner
Wakonda
Wall
Wasp No 2 Spur
Wasta
Wendte
Wentworth
Wessington Springs
Weta
White Lake
Whitewood
Winfred
Winner
Witten
Wood
Woonsocket
Worthing
Yankton

TEXAS—**All stations.**

UTAH—**All stations.**

WYOMING—**All stations.**

Note 40

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail ** transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described below, provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory

Points in Wisconsin

Points in Upper Peninsula of Michigan

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River territory as described in Note 30, pages 77 and 78 of tariff as amended

Points in Dominion of Canada, viz: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz.: Rivers, Canals and connecting waterways), named above.

These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

**Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional) will apply.

♦Increase

Note 4.

RESHIPPING

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Except as otherwise provided in tariff, as amended, rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described herein, provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate there from.

These rates will also apply on shipments moving to Peoria, Ill., under rates published in Illinois River Packet Co., Tariff No. 4-O, I. C. C. No. 66 and Spring Lake Packet Co., Tariff No. 4-N, I. C. C. No. 58, supplements thereto or successive issues thereof.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A-1 **Rates on Grain, see Note 5, page 71 of tariff**, from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., and Milwaukee, Wis., and points **taking same rates as shown on pages 7 to 10, inclusive of tariff**, subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77 of tariff, as amended), or Northwest Territory (see Note 40, page 83 of tariff, as amended).)

A-2 **Rates on Grain Products (see Note 10, pages 72 and 73 of tariff**, from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewaunee, Wis., Manistique, Mich., Manitowoc, Wis., Menominee, Mich., Milwaukee, Wis., **and points taking same rates as shown on pages 7 to 10, inclusive of tariff**, subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77 of tariff, as amended), or Northwest Territory (see Note 40, page 83 of tariff, as amended).)

B-1 **Rates on Grain (see Note 5, page 71 of tariff**, from Peoria, Ill., **and points taking same rates as shown on pages 7 to 10, inclusive, except as provided in paragraph B-2 hereof**, subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77 of tariff, as amended), or Northwest Territory (see Note 40, page 83 of tariff, as amended).)

B-2 Rates on Grain (see Note 5, page 71 of tariff), from Peoria, Ill., subject to the provisions of this Note will apply from Peoria, Bloomington, Crescent, Pekin, South Bartonville and Springfield, Ill., only as follows:

(a) As proportional or reshipping rates on shipments originating at stations shown in tariffs named in Note A, page 9 hereon, supplements thereto or successive issues thereof, from which proportional rates are published to Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and only when such proportional rates are assessed into Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and when the grain is destined to the following points:

Bellaire	Ohio	Crabtree	Pa.	Irvineton	Pa.	Oil City	Pa.
Belle Vernon	Pa.	Dunkirk	N. Y.	Jacobs Creek	Pa.	Parkersburg	W. Va.
Bessemer	Pa.	East Buffalo	N. Y.	Johnstown	Pa.	Pittsburgh	Pa.
Black Rock	N. Y.	Elizabeth	Pa.	Lewisrose	Pa.	Point Pleasant	W. Va.
Blairsville	Pa.	Ellwood City	Pa.	Masontown	Pa.	Ravenswood	W. Va.
Bridgeport	Ohio	Erie	Pa.	Marwell	Pa.	Salamanca	N. Y.
Brownsville	Pa.	Fairchance	Pa.	Monongahela	Pa.	Suspension Bridge	N. Y.
Buffalo	N. Y.	Gauley Bridge	W. Va.	Moundsville	W. Va.	Titusville	Pa.
Charleston	W. Va.	Grafton	W. Va.	New Martinsville	W. Va.	Washington	Pa.
Connellsville	Pa.	Huntington	W. Va.	Niagara Falls	N. Y.	West Newton	Pa.
Corry	Pa.	Indiana	Pa.	North Tonawanda	N. Y.	Wheeling	W. Va.

and points taking same rates or arbitraries higher as shown in CFATB Freight Tariff No. 470-A, ICC No. 2930, also points taking same rates as listed on pages 11 to 65, inclusive of tariff.

Effective October 15, 1939. Agent B. T. Jones Tariff I.C.C. 3300, Supplement 7.

(b) As proportional or reshipping rates on shipments originating at points beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77 of tariff, as amended), Northwest Territory (see Note 40, page 83 of tariff, as amended), or traffic covered by paragraph (a), Section B-2 of this Note.

B-3 **Rates on Grain Products (see Note 10, pages 72 and 73 of tariff**, from Peoria, Ill., **and points taking same rates as shown on pages 7 to 10, inclusive of tariff**, subject to the provisions of this Note, apply on shipments of Grain Products (except on commodities named in Note 10, bearing reference ✱), originating beyond, except origin territory covered by Trans-Mississippi River Territory (see Note 20, pages 76 and 77 of tariff, as amended), Northwest Territory (see Note 40, page 83 of tariff, as amended), or on shipments subject to rates in tariffs named in Note A below, supplements thereto or successive issues thereof, from which proportional rates are published to Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive of tariff, and when the grain products are destined to the following points, rates on grain products subject to this Note will only apply when the proportional rates published in tariffs named in Note A below, supplements thereto or successive issues thereof, are assessed on the inbound shipments to Peoria, Ill., and points taking same rates as shown on pages 7 to 10, inclusive of tariff:

Bellaire	Ohio	Crabtree	Pa.	Irvineton	Pa.	Oil City	Pa.
Belle Vernon	Pa.	Dunkirk	N. Y.	Jacobs Creek	Pa.	Parkersburg	W. Va.
Bessemer	Pa.	East Buffalo	N. Y.	Johnstown	Pa.	Pittsburgh	Pa.
Black Rock	N. Y.	Elizabeth	Pa.	Lewisrose	Pa.	Point Pleasant	W. Va.
Blairsville	Pa.	Ellwood City	Pa.	Masontown	Pa.	Ravenswood	W. Va.
Bridgeport	Ohio	Erie	Pa.	Marwell	Pa.	Salamanca	N. Y.
Brownsville	Pa.	Fairchance	Pa.	Monongahela	Pa.	Suspension Bridge	N. Y.
Buffalo	N. Y.	Gauley Bridge	W. Va.	Moundsville	W. Va.	Titusville	Pa.
Charleston	W. Va.	Grafton	W. Va.	New Martinsville	W. Va.	Washington	Pa.
Connellsville	Pa.	Huntington	W. Va.	Niagara Falls	N. Y.	West Newton	Pa.
Corry	Pa.	Indiana	Pa.	North Tonawanda	N. Y.	Wheeling	W. Va.

and points taking same rates or arbitraries higher as shown in CFATB Freight Tariff No. 470-A, ICC No. 2930, also points taking same rates as listed on pages 11 to 65, inclusive of tariff.

B-4 **Rates on Grain Products named in Note 10, bearing reference ✱ from Peoria, Ill. and points taking same rates as shown on page 7 to 10, inclusive of tariff**, subject to the provisions of this Note, apply on shipments originating beyond, except origin territory covered by Trans-Mississippi River Territory (see Note 20, pages 76 and 77 of tariff, as amended), or Northwest Territory (see Note 40, page 83 of tariff, as amended).

NOTE A.

Issuing Line or Agent	Tariff No.	ICC No.	Item, Index or Reference No.
AT&SFRy	7134-I	13059	Items Nos. 165, 170, 175, 180, 185 and 190
AltonRR	1604-N	174	Item 220
C&EIRy	G. F. O. 1348-Q	18851	Note 2, page 48
C&NWRy	8-H	B-278	Page 11
	G. F. D. 17063-A	10684	Index Nos. 1665 to 1683, 1687 to 1701, incl.
CRI&PRy	34500-A	C-12579	Item No. 300
CCC&StLRy	1370-D	8855	
*CS&SLRy	30 (CS&SLRy.)	33	
*CRR	1537-K	A-11148	Index Nos. 296 and 302 to 310, incl.
IBTRR	440-E	194	Index Nos. 64 to 101, 138 to 144, incl.
†Illinois River Packet Co	4-O	66	
M&StLRR	1605-H	B-640	Index Nos. 18436 to 18478, incl.
NYC&StLRR	G. F. D. 15-T	5778	Index Nos. 432 to 448, incl.
P&PURy		66	Item 330
PTCo	19-E	9	Item 320
PRR	73-H	18-I	Item 750
Spring Lake Packet Co	41-N	60	Note B
TP&WRR	165-Y	174	

†‡Application via water transportation eliminated, except as otherwise provided in this Note, rates not reshipping or proportional will apply.

*Increase.

The changes shown above as made in Supplement 7 are under suspension in I.& S.Docket 4718, until May 15,1940,per supplement 9, Agent B.T.Jones Tariff 535-A,I.C.C.3300.

PART II. PROVISIONS APPLICABLE IN CONNECTION WITH RATES TO EASTERN TERRITORY

Effective March 15, 1910. L.S.& M.S. Ry.Tariff I.C.C.No. A-2803.	Published re-shipping rates applying on shipments from points from which no through rates were in effect,also applicable on Grain,carload,received by boat.
Effective September 15,1911. L.S.& M.S. Ry.Tariff I.C.C.No. A-2723, Supplement 2.	Published reshipping rates applicable when no through rates are in effect via Chicago,Englewood,Brookline,Grand Crossing,Park Manor, So.Chicago,East Side,Ill.,Whiting and Indiana Harbor,Ind.,or when transit privileges under through joint rates have expired. The reshipping rates as published herein apply subject to rules and conditions contained in Joint Transit Privilege Circular I.C.C.No.138 (L.S.& M.S.G.F.D.No.2048-F) issued by Paul P.Rainer,Agent,and supplements thereto and reissues thereof. The reshipping rates on Grain in carloads,will also apply on shipments received by boat.
Effective August 15, 1912. L.S.& M.S. Ry.Tariff I.C.C.No. A-2719, Supplement 5.	Published reshipping or proportional rates on Grain to only apply on shipments received from connecting rail or lake lines,handled under rules and conditions provided in the following tariffs and supplements thereto or reissues thereof,issued by P.P.Rainer,Agent: I.C.C.222 (L.S.& M.S.Joint G.F.D.2048-G) I.C.C.223 (L.S.& M.S.Joint G.F.D.4247-E) and on through billed shipments originating at points from which no through rates are in effect not stopped in transit at these points.
Effective June 7, 1918. N.Y.C. R.R.Tariff I.C.C.L.S. No.499.	Note 19 - Reshipping Rates. Rates named on page 35 in column headed Note 19 are reshipping or proportional, applying from stations shown on pages 8 and 11,taking group 1 rates on Grain, in carloads as shown in List 1,page 26,originating at points from which no through joint rates are in effect, except as provided for in columns headed Notes 20 and 21,and will also apply on Grain originating in same territory,handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission. Note 20 - Trans-Mississippi River. Rates named on page 35 in column headed Note 20, will apply from stations shown on pages 8 and 11,taking Group 1 rates on Grain,in carloads,as described in List 1,page 26 when originating at points in Trans-Mississippi River territory as described in Territorial Directory No.3-C,I.C.C.No.655,G.F.D No.L.S.112-A,supplements thereto and reissues thereof,issued by Eugene Morris, Agent,handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission,also on through consignment of Grain,from Trans-Mississippi River territory, except as otherwise specifically provided herein. Note 21 - Northwest. Rates named on page 35 in column headed Note 21, will apply from stations shown on pages 8 and 11,taking Group 1 rates,on Grain in carloads,as described in List 1,page 26,when originating in the following described territory from which no through rates are in effect. (a) From points in Wisconsin. (b) From points in the Upper Peninsula of Michigan. (c) From points west of the Minnesota-Wisconsin State line,except as provided for in Note 20. (d) On shipments which arrive by boat lines at stations shown on page 8,Chicago,Ill.(Index No.1),to Indiana Harbor,Ind.(Index No.7),inclusive,originating at any of the points in the above defined territory.

Published the following application in connection with rates applicable on shipments moving on:

Note 100 - Where reference is given to this Note, the Reshipping or proportional rates, from reshipping point making specific reference to this note, will apply on Grain and Grain Screenings, named in List A, page 14,and will apply only on shipments handled under rules and conditions provided in the following Transit Privilege Circulars issued by Paul P.Rainer (Agent) and Geo.Merki (Agent)

C.F.A.I.& W.B.

I.C.C.No.47 I.C.C.No.52	Circular publishing Rules Governing Joint Transit Privileges on Grain,C.L.,at Milwaukee and Manitowoc,Wis.,issued by George Merki (Agent).
I.C.C.No.326	Circular publishing Rules Governing Joint Transit Privileges on Grain,C.L.,at Chicago District stop-over points named in Paul P.Ranier's (Agent) Joint Transit Privilege Circular No.17,I.C.C. 326.

Effective December 31,1919. Agent W.J.Kellys Tariff I.C.C. 939.

And on through billed shipments originating at points from which no through joint rates are in effect,not stopped in transit at reshipping points sbuject to this application.

NORTHWESTERN TERRITORY.

Note 115 - Where reference is made to this Note,rates as named in this tariff or supplements thereto will apply as proportional rates on traffic originating at the following points,from which no through joint rates are in effect.

This basis applies only on shipments received from connecting rail or lake lines handled under rules and conditions as provided in Circulars referred to on pages 236 to 245.

Rates subject to this Note will also apply on the Products of Grain,milled in transit at points in this territory,or milled or malted in transit at reshipping points making specific reference to this Note,en route to final destination,in accordance with and subject to rules and charges governing milling or malting privileges named on pages 236 to 245,provided the Grain originates beyond Reshipping Points making specific reference to this Note,from points from which there are no through rates in effect,will be subject east of Reshipping Points subject to this application to the reshipping or proportional rates named,applicable from such Reshipping

Points making specific reference to this Note,on like products shipped from point where the Grain so milled in transit originates.

Rates named from Bloomington,Ill.,subject to this Note will not apply on traffic originating at points named in Note 150,page 206.

DOMINION OF CANADA-All points in the Provinces of Alberta, British Columbia,Manitoba and Saskatchewan.

IDAHO-All points,except when routed via Missouri River Crossings (See Notes A and B,page 195).

MICHIGAN (Upper Peninsula) Specified points.

MINNESOTA-All points,except the following: (See Note B,page 195)

Adrian	Ellsworth	Manley	Sioux Falls Jct.
Ash Creek	Hills	Org	Steen
Beaver Creek	Kanaranzi	Round Lake	Warner
Bigelow	Luverne	Rushmore	Worthington
Bruce	Magnolia		

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MONTANA-All points,except when routed via Missouri River Crossings (See Notes A and B,Page 195).

NORTH DAKOTA-All points.

OREGON-All points except the following when routed via Missouri River Crossings (See Notes A, page 195);Arcadia,Cairo,Huntington,Mallett,Nyssa,Ontario and Vale.

SOUTH DAKOTA-All points, except specified points.

WASHINGTON-All Stations.

WISCONSIN-Specified points.

Note A-The Missouri River Crossings are as follows:

Armourdale,Kas.	Kansas City,Mo.	Omaha,Neb.	Sioux City,Ia.
Atchison,Kas.	Leavenworth,Kas.	Pacific Jct.,Ia	So.Omaha,Nebr.
Council Bluffs,Ia.	Nebraska City,Neb.	St Joseph,Mo.	Sugar Creek,Mo.
Kansas City,Kas.			

Note B-On traffic routed via Missouri River Crossings,as named in Note A above,other than fromexcepted points in States named in this Note,local rates as provided in tariff,or as same may be amended,will apply from all reshipping points making specific reference to this Note,infiguring combinations onsuch gateways, from excepted points in Idaho,Minnesota,Montana,Oregon and South Dakota,the reshipping rates from reshipping points subject to application of the rates applicable from Trans-Miss-

issippi River Rerritory,described in Note 125,page 196 and 197,will apply in figuring combinations on such gateways.

TRANS-MISSISSIPPI RIVER TERRITORY

NOTE 125 - Where reference is made to Note 125,rates named in this tariff will apply as reshipping or proportional rates on traffic originating at the following points from which no through joint rates are in effect,subject to rules and conditionsas provided in Circulars referred to on page 236 to 245.

Rates named from reshipping points making specific to this Note will apply on the Products of Grain (See list C, pages 16 to 19) milled in transit at reshipping points subject to this application,or at points in territory described in this Note,will be subject east of reshipping points subject to this application,to the reshipping or proportional rates named applicable from reshipping points making specific reference to this Note,on like products shipped from points where the Grain so milled in transit originates.

ARIZONA-Stations as specified.

ARKANSAS-All stations.

Effective December 31,1919. Agent W.J.Kellys Tariff I.C.C. 839.

COLORADO-All stations.

IDAHO-All stations when routed via Missouri River Crossings (named in Note A,page 197.)

IOWA-Stations as specified.

KANSAS-All stations.

MEXICO-All stations.

MISSOURI-Stations as specified.

MONTANA-All stations when routed via Missouri River Crossings (named in Note A,page 197) except as specified.

NEBRASKA-All stations.

NEW MEXICO-All stations.

OKLAHOMA-All stations.

OREGON-Stations as specified when routed via Missouri River Crossings (named in Note A,below).

SOUTH DAKOTA-Stations as specified.

TEXAS-All stations.

UTAH-All stations.

WYOMING-All stations.

Note A-The Missouri River Crossings are as follows:

Armourdale,Kas	Kansas City,Mo.	Omaha,Neb.	Sioux City,Ia.
Atchison,Kas.	Leavenworth,Kas.	Pacific Jct.,Ia.	So.Omaha,Neb.
Council Bluffs,Ia.	Nebraska City,Neb.	St Joseph,Mo.	Sugar Creek,Mo.
Kansas City,Kas.			

Note 20 - Application of reshipping or proportional rates from Chicago, Joliet, Kankakee, Milwaukee, Manitowoc, etc.

Where reference is made to this Note, rates apply as reshipping or proportional rates applicable on traffic reaching the reshipping point VIA A RAIL OR WATER TRANSPORTATION LINE that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination: provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

Rates also apply on through billed shipments originating at points from which no through joint rates are in effect, not stopped in transit at reshipping points subject to this application.

These rates will also apply to shipments handled in conformity with transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

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Note 25 - Application of reshipping or proportional rates on traffic originating in Trans-Mississippi River territory.

Where reference is made to this note,rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point,and will only apply on such traffic when originating at points in Trans-Mississippi River Territory (as described below),from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination:provided,that in no case shall the combination through rate to and from the

reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

These rates will also apply to shipments handled in conformity with transit rules and regulations published in tariffs on file with the Interstate Commerce Commission

TRANS-MISSISSIPPI RIVER TERRITORY

ARIZONA-All stations as specified.

ARKANSAS-All stations.

COLORADO-All stations.

IDAHO-All stations when routed via Missouri River Crossings (named in Note A).

IOWA-Stations as specified.

KANSAS-All stations.

MEXICO-All stations.

MISSOURI-Stations as specified.

MONTANA-Stations as specified.

NEBRASKA-All stations.

NEW MEXICO-All stations.

OKLAHOMA-All stations.

OREGON-Stations as specified when routed via Missouri River Crossings (named in Note A).

SOUTH DAKOTA-Stations as specified.

TEXAS-All stations.

UTAH-All stations.

WYOMING-All stations.

Note A-The Missouri River Crossings are as follows:

Armourdale,Kas.	Kansas City,Mo.	Omaha,Neb.	Sioux City,Ia.
Atchison,Kas.	Leavenworth,Kas.	Pacific Jct.,Ia.	So.Omaha,Neb.
Council Bluffs,Ia.	Nebraska City,Neb.	St Joseph,Mo.	Sugar Creek,Mo.
Kansas City,Kas.			

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Note 30-Application of Reshipping or Proportional rates on traffic originating in Northern Iowa territory.

Where reference is made to this Note, rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in Northern Iowa territory (as described below), from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination: provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

These rates will also apply to shipments handled in conformity with transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

NORTHERN IOWA TERRITORY

Effective October 15,1921. Agent W.J.Kellys Tariff I.C.C. 1126.

IOWA-Points as specified.

Note 35-Application of Reshipping or Proportional rates on traffic originating in Illinois-Iowa territory.

Where reference is made to this Note, rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the reshipping point, and will only apply on such traffic when originating at points in Illinois (see Note A below) and the following points in Iowa: Ballinger, Becks, Bellevue, Bettendorf, Bricker, Buffalo, Bullards, Burlington, Camanche (des Moines Co.), Clinton, Davenport, Dubuque, Elk River Jct., Fairport, Folletts, Ft. Madison, Garland, Green Island, Kempers, Keokuk, Lainsville, LeClaire, Linwood, Lyons, Macuta, Middle Lock, Montpelier, Montrose, Mooar, Muscatine, Patterson, Pleasant Creek, Pleasant Valley, Princeton, Satula, Sandusky, Shaffton, Shopton Tile Works, Viele, W.Burlington, W.Keithsburg, Wever, from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination: provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

These rates will also apply to shipments handled in conformity with transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Note A- From the following points in Illinois, rates apply only when proportional rates published in tariffs named on page 147 to Peoria or Pekin, Ill., are assessed to Peoria or Pekin, Ill.

Illinois points as specified.

List of tariffs naming proportional rates on grain from Illinois points specified in Note A above to Peoria and Pekin, Ill.:

Issuing line or Agent	Tariff No.	I.C.C.No.	Item, Index or Reference No.
A.T.& S.F.	7124-E	8872	40-A, 45-A, 50-A
C.& A.	1604-F	A-1412	215
C.B.& Q.	GFO 1346-G	14209	4125
C.& N.W.	GFD 8300-D	8665	Ind. 87 to 97
C.P.& St.L.	8268-I	1210	90
C.R.I & P.	22000-F	C-10758	(Ind. 30 to 62 (Ind. 66 and 68.
C.C.C.& St.L.	1386-T	7629	
I.C.	1537-D	A-9339	Ind. 356 to 363
I.T.Sys.	480-A	319	(Ind. 65 to 68 (Ind. 77 to 80
Ill.River Packet Co.	43-C	35	
L.E.& W.	501-F	3023	(Ind. 1200-A to (1200-D
M.& St.L.	1590-C	B-370	Ind. 380.
P.& P.U.		31	48
Peoria Ry Term.	19-A	30	70
P.C.C.& St.L.		P-1218	174
Spring Lake Packet Co.	41-D	35	
T.P.& W.		1632	

Effective October 15, 1921. Agent J.Kellys Tariff I.C.C. 1126.

Note 40-Application of Reshipping or Proportional rates on Grain originating in Northwestern territory.

Where reference is made to this Note, rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in Northwestern Territory (as described below), from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination: provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

Rates named from Bloomington,Ill.,subject to this Note will not apply on traffic originating at points named on page 166 These rates will also apply to shipments handled in conformity with transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

DOMINION OF CANADA-All points in the Provinces of Alberta,British Columbia,Manitoba and Saskatchewan.

IDAHO-All points,except when routed via Missouri River Crossings (See Note A).

MICHIGAN-(Upper Peninsula) Specified points.

MINNESOTA-Specified points

MONTANA-All points,except when routed via Missouri River Crossings (See Note A)

NORTH DAKOTA-All points.

OREGON-Stations as specified when routed via Missouri River Crossings (See Note A).

SOUTH DAKOTA-Stations as specified.

WASHINGTON-All stations.

WISCONSIN-Specified points.

Note A-The Missouri River Crossings are as follows:

Armourdale,Kas.	Kansas City,Mo.	Omaha,Neb.	Sioux City,Ia
Atchison,Kas.	Leavenworth,Kas.	Pacific Jct.,Ia.	So.Omaha,Neb.
Council Bluffs,Ia.	Nebraska City,Neb.	St.Joseph,Mo.	Sugar Creek,Mo
Kansas City,Kas.			

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Note 20 - Application of reshipping or proportional rates from Chicago, Joliet, Kankakee, Milwaukee, Manitowoc, etc.

Where reference is made to this Note, rates apply as reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points from which no joint through rate is in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination: provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to

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Effective January 15, 1924. Agent B.T. Jones' Tariff I.C.C. 1373 Supplement 11.

Note 20 - Application of re-shipping or proportional rates from Chicago, Joliet, Kankakee, Milwaukee, Manitowoc, etc.

Where reference is made to this note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the re-shipping rate therefrom.

These rates are applicable on Ex-lake shipments as of the date such shipments leave the lake port.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Milwaukee or Manitowoc via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

Effective November 10,1922. Agent W.J.Kellys Tariff I.C.C.1126, Supplement 23.	to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom. These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port. The Ex-Lake Grain and (or) Grain Product rates are applicable as of the date shipments leave the lake port and will apply only on Grain and (or) Grain Products which arrive at Chicago,Milwaukee,Manitowoc via lake:also on Grain Products milled fromGrain which arrives at these ports via lake. These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission. Rates also apply on through billed shipments originating at points from which no joint through rates are in effect, not stopped in transit at reshipping points subject to this application.
Effective September 15,1939. Agent B.T.Jones Tariff I.C.C. 3055 Supplement 64.	Note 20 - Application of re-shipping or proportional rates from Chicago, Joliet, Kankakee, Milwaukee, Manitowoc,etc. Where reference is made to this Note,rates apply as re-shipping or proportional rates applicable on: (a) Traffic reaching the re-shipping point via a rail transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the reshipping rate therefrom. (see exception below). (b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago,Ill.,Kewaunee,Wis.,Mackinaw City,Mich., Manitowoc,Wis.,Menominee,Mich.,Manistique,Mich. and Milwuakee, Wis. (Will not apply on Ex-River,Canal,River-Canal or Canal-River traffic, arriving via Illinois waterways,viz: Rivers, Canals and connecting waterways.) These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the lake port named above. These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

Exception - The foregoing provision as to application of the local rate as minima will not apply on shipments of Malt and Malt Sprouts, C.L., originating at Jefferson Jct., Wis.

Note 25 (Amend). APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN TRANS-MISSISSIPPI RIVER TERRITORY

Where reference is made to this Note, rates apply as re-shipping or proportional rates on traffic reaching the re-shipping point via a rail transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points in **Trans-Mississippi River Territory** (as described on pages 96 and 97 of tariff), from which no joint through commodity rates are in effect in connection with the inbound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

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Note 35 (Amend). APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN ILLINOIS-IOWA TERRITORY

Except as otherwise provided herein, where reference is made to this Note, rates apply as re-shipping or proportional rates on traffic reaching the re-shipping point via a rail transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points in **Illinois** (see exception on pages 98 and 99 of tariff) and the following points in **Iowa**: Beck, Bellevue, Bettendorf, Bricker, Buffalo, Bullard, Burlington, Camanche, Clinton, Davenport, Dubuque, Elk River Jct., Fairport, Ft. Madison, Garland, Gordon's Ferry, Green Island, Hurst Mill Spur, Kemper, Keokuk, Le Claire, Linwood, Lyons, Montpelier, Montrose, Moosar, Muscatine, Patterson, Pleasant Creek, Pleasant Valley, Princeton, Sabula, Sandusky, Shaffton, Shopton, Spring Grove, Tile Works, Viele, West Burlington, West Keithsburg, Wever, from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination thru rates to and from the re-shipping point be less than the thru joint rates in effect on the commodity forwarded from the re-shipping point from origin point of the grain to final destination of the Grain, Grain Products or By-Products of Grain via any route, the difference necessary to protect the through joint rates on the commodity forwarded from the re-shipping point from origin of the grain to final destination of the Grain, Grain Products or By-Products of Grain, to be added to the re-shipping or proportional rates from the re-shipping point. See exception on pages 98 and 99 of tariff.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

Note 40 (Amend). APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWESTERN TERRITORY

Where reference is made to this Note, rates apply as re-shipping or proportional rates on traffic reaching the re-shipping point via a rail transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points in **Northwestern Territory** (as described below and on pages 100 and 101 of tariff), from which no through joint commodity rates are in effect in connection with the inbound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point be less than the local rate from the re-shipping point to destination; the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

Rates named from **Bloomington, Ill.**, subject to this Note will not apply on traffic originating at points named on page 117 of tariff.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

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The effective date of Supplement 64 was POSTPONED until October 15,1939.

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Note 20

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail ††transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. (See Exception below.)

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways, except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

Exception.—The foregoing provision as to application of the local rates as minima will **not** apply on shipments of Malt and Malt Sprouts, C.-L., originating at Jefferson Junction, Wis. **Expiration date eliminated.**)

††Application via water transportation **eliminated**; except as provided in this Note, rates (not re-shipping or proportional)

Note 25

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN TRANS-MISSISSIPPI RIVER TERRITORY

Where reference is made to this Note, rates apply as re-shipping or proportional rates on traffic reaching the re-shipping point via a rail ††transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points in **Trans-Mississippi River Territory** (as described on pages 96 and 97 of tariff, as amended), from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

These rates will also apply on shipments moving from Kansas City, Mo., to Peoria, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I. C. C. No. 148, supplements thereto or successive issues thereof.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

TRANS-MISSISSIPPI RIVER TERRITORY

ARIZONA—Stations as follows:

Acacia.	Calva.	Enid.	Humboldt.	Parker.	South Siding.
Aguila	Canelo.	Erman.	Huron.	Patagonia.	Stark.
Allah.	Cavot.	Escala.	Kelvin.	Peterson.	Stoval.
Alrich.	Cazador.	Fields.	Kendall.	Pica.	Sunshine.
Alto.	Chandler.	Florence.	Kim.	Piedra.	Tanque.
Anita.	Charleston.	Flores.	Kingdon.	Pinal.	Tempe.
Apache.	Chiricahua.	Flux.	Kiser.	Pitt.	Theba.
Apex.	Claypool.	Forepaugh.	Lancha.	Poland Jct.	Thomson.
Arizona City.	Clifton.	Forrest.	Lee.	Polvo.	Tombstone.
Arkill.	Cochran.	Fortuna.	Lewis Springs	Prairie	Topock.
Asher.	Coledon.	Frankenburg.	Lirim.	Price.	Tovrea.
Ashurst.	Coconino.	Gael.	Lone Star.	Prieta.	Utting.
Audley.	Congress.	Gila.	Lowell.	Puntenney.	Vail.
Bawtry.	Contention.	Gilbert.	McQueen.	Queen Creek.	Valle.
Bernardino.	Cordes.	Glenbar.	Magma.	Quivero.	Vanar.
Bisbee Jct.	Creamery.	Golden.	Marana.	Radium.	Vicksburg.
Blue Bell.	Crook.	Grand Canyon.	Miami.	Rankin.	Wall.
Bon.	Denny.	Granite Spur.	Mobile.	Red Lake.	Warren.
Bouse.	Divide.	Guthrie.	Mohawk.	Saddle.	Wenden.
Branaman.	Doce.	Haeckel.	Montrose.	St. Davids.	West Chandler.
Buchan.	Dome.	Hamm.	Munn.	Salome.	Willaha.
Burch.	Don Luis	Hayden.	Naco.	San Pedro.	Winkelman.
Burns.	Douglas.	Helena.	Naches.	San Simon.	Wooley.
Buttes.	Drury.	Hereford	Navajo.	Sheldon.	York.
Bylas.	Duncan.	Higley.	Oratilla.	Solomon.	Zellweger.
Calumet.	Eloy.	Hopi.	Pan.		

ARKANSAS—All stations.

CALIFORNIA—All stations.

COLORADO—All stations.

IDAHO—All stations when routed via Missouri River Crossings (named in Note 110, page 106 of tariff).

IOWA—All stations except the following:

Beck.	Burlington.	Ft. Madison.	LeClaire.	Patterson.	Shopton.
Bellevue.	Camanche.	Garland.	Linwood.	Pleasant Creek.	Spring Grove.
Bettendorf	Clinton.	Gordon's Ferry.	Lyons.	Pleasant Valley.	Tile Works.
Bricker.	Davenport.	Green Island.	Montpelier.	Princeton.	Viele.
Buffalo.	Dubuque.	Hurst Mill Spur.	Montrose.	Sabula.	West Burlington.
Bullard.	Elk River Jct.	Kemper.	Mooar.	Sandusky.	West Keithsburg.
	Fairport.	Keokuk.	Muscatine.	Shaffton.	Wever.

KANSAS—All stations.

MEXICO—All stations.

MISSOURI—All stations except the following:

Alexandria.	Fenway.	Huiskamp.	LaMotte.	Reading.	Saverton.
Ashburn.	Gregory.	Ilasco Jct.	Louisiana.	Riverland.	West Quincy.
Busch.	Hannibal.	LaGrange.	Mark.	St. Louis.	White Rock.
Canton.	Helton.	Lamb.	Munger's Switch.		

MONTANA—All stations when routed via Missouri River Crossings (named in Note 110, page 106 of tariff).

NEBRASKA—All stations.

NEVADA—All stations.

NEW MEXICO—All stations.

OKLAHOMA—All stations.

(Concluded on following page)

††Application via water transportation **eliminated**; except as provided in this Note, rates (not re-shipping or proportional) published in tariff, as amended, will apply.

Note 25—Concluded

TRANS-MISSISSIPPI RIVER TERRITORY—Concluded

OREGON—Stations as follows when routed via Missouri River Crossings (named in Note 110, page 106 of tariff).

Arcadia.	Huntington.	Mallett.	Nyssa.	Ontario.	Vale.
Cairo.					

SOUTH DAKOTA—Stations as follows:

Alcester.	Chester.	Flandreau.	Lennox.	Parkston.	Tabor.
Alexandria.	Chilson.	Forestburg.	Lesterville.	Peaks.	Talmo.
Alpena.	Colman.	Fort Pierre.	Letcher.	Philip.	Tea.
Ardmore.	Colome.	Freeman.	Loomis.	Piedmont.	Teton.
Argonne.	Colton.	Fruitdale.	Loring.	Plankinton.	Tilford.
Argyle.	Conata.	Fullerville.	Lyman.	Platte.	Trent.
Armour.	Corsica.	Fulton.	Lyons.	Pluma.	Tripp.
Artesian.	Corson.	Garretson.	McCook.	Plumb.	Trojan.
Asylum Track.	Cottonwood.	Gayville.	Madison.	Powell.	Tuscan
Avon.	Creston.	Geddes.	Marietta.	Presho.	Tyndall.
Baltic.	Crooks.	Gregory.	Marion Jct.	Pringle.	Underwood.
Beardsley.	Custer.	Harrisburg.	Mayo.	Provo.	Unityville.
Belle Fourche.	Cuthbert.	Hartford.	Meckling.	Pukwana.	Utica.
Belvidere.	Dallas.	Hermosa.	Menno.	Quinn.	Vale.
Benclare.	Dante.	Herrick.	Midland.	Ramona.	Valley Springs.
Beresford.	Davis.	Hill City.	Minnekahta.	Rapid City.	Van Metre.
Berne.	Deadwood.	Hill Siding.	Mission Hill.	Ravinia.	Vermillion.
Betts.	Dell Rapids.	Hooker.	Mitchell.	Redfern.	Viborg.
Black Hawk.	Delmont.	Hot Springs.	Monroe.	Redwater Siding.	Vilas.
Blacktail.	Dewey.	Howard.	Montrose.	Reliance.	Virgil.
Bonesteel.	Dimock.	Hudson.	Morefield.	Renner.	Vivian.
Booge.	Dolton.	Humboldt.	Mosher.	Riverside.	Volin.
Bovee.	Draper.	Huntimer.	Mt. Vernon.	Rochford.	Wagner.
Box Elder.	Dumont.	Hurley.	Murdo-MacKenzie.	Roswell.	Wakonda.
Brandon.	East Sioux Falls.	Imlay.	Murphy.	Rowena.	Wall.
Bridgewater.	Edgemont.	Interior.	Mystic.	Rumford.	Wasp No. 2 Spur.
Buena Vista.	Egan.	Irene.	Nahant.	St. Charles.	Wasta.
Buffalo Gap.	Elk Point.	Ivanhoe.	Naomi.	St. Onge.	Wendte.
Burbank.	Ellis.	Janousek.	Newell.	Salem.	Wentworth.
Burdock.	Emery.	Jefferson.	Nisland	Scenic.	Wessington Springs.
Burke.	Englewood.	Junius.	Nowlin.	Scotland.	Weta.
Burton.	Erskine.	Kadoka.	Oacoma.	Shindlar.	White Lake.
Canistota.	Esmond.	Kaylor.	O. D. Siding.	Siding No. 11.	Whitewood.
Canova.	Ethan.	Kennebec.	Oelrichs.	Sioux Falls.	Winfred.
Canton.	Evans Siding.	Keystone.	Okaton.	Smithwick.	Winner.
Capa.	Fairburn.	Kimball.	Oldham.	Spencer.	Witten.
Caputa.	Fairfax.	Kingsburg.	Oral.	Springfield.	Wood.
Carthage.	Fairview.	Kirk.	Oreville.	Stamford.	Woonsocket.
Centerville.	Farmer.	Lake Andes.	Owanka.	Stickney.	Worthing.
Chamberlain.	Farmingdale.	Lane.	Parker.	Sturgis.	Yankton.
Chancellor.	Fedora.	Lead.			

TEXAS—All stations.

UTAH—All stations.

WYOMING—All stations.

Note 35

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN ILLINOIS-IOWA TERRITORY

Except as otherwise provided herein, where reference is made to this Note, rates apply as re-shipping or proportional rates on traffic reaching the re-shipping point via a rail ††transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate piad to the re-shipping point, and will only apply on such traffic when originating at points in **Illinois** (see exception on pages 98 and 99 of tariff, as amended), and the following points in **Iowa:** Beck, Bellevue, Bettendorf, Bricker, Buffalo, Bullard, Burlington, Camanche, Clinton, Davneport, Dubuque, Elk River Jct., Fairport, Ft. Madison, Garland, Gordon's Ferry, Green Island, Hurst Mill Spur, Kemper, Keokuk, Le Claire, Linwood, Lyons, Montpelier, Montrose, Mooar, Muscatine, Patterson, Pleasant Creek, Pleasant Valley, Princeton, Sabula, Sandusky, Shaffton, Shopton, Spring Grove, Tile Works, Viele, West Burlington, West Keithsburg, Wever, from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination thru rates to and from the re-shipping point be less than the thru joint rates in effect on the commodity forwarded from the re-shipping point from origin of the grain to final destination of the Grain, Grain Products or By-Products of Grain via any route, the difference necessary to protect the through joint rates on the commodity forwarded from the re-shipping point from origin of the grain to final destination of the Grain, Grain Products or By-Products of Grain, to be added to the re-shipping or proportional rates from the re-shipping point. See exception on pages 98 and 99 of tariff, as amended.

These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co., Tariff No. 41-O, I. C. C. No. 66 and Spring Lake Packet Co., Tariff No. 41-N, I. C. C. No. 59, supplements thereto or successive issues thereof.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

(Continued on following page)

††Application via water transportation **eliminated**; except as provided in this Note, rates (not re-shipping or proportional) published in tariff, as amended, will apply.

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Note 35

EXCEPTION.

When from the following points in **Illinois**, rates apply only when proportional rates published in tariffs named on page 99 of tariff, as amended, to ⑮ Bloomington, Peoria or Pekin, Ill., are assessed to ⑮ Bloomingston, Peoria or Pekin, Ill.

Abingdon
Adair
Adrian
Akron
Aledo
Algers
Allen
Allentown
Alpha
Alta
Altona
Ancona
Apple Creek
Appleton
Arlington
Arpee
Astoria
Atkinson
Augusta
Avon
Bader
Bardolph
Bartlett(PeoriaCo.)
Basco
Bath
Beardstown
Beebe's Island
Bell
Belsley
Benson
Berwick
Biggsville
Bishop
Bishop Hill
Bloomington
Bluff Hall
Bradford
Breeds
Brewster
Briggs Landing
Brimfield
Broadmoor
Bronson
Browning
Brownwood
Bryant
Bucks
Buda
Bureau
Burnett
Burt
Bushnell
Bybee
Caldwell
Cambridge
Cameron
Camp Point
Canton
Carle Springs
Carlock
Carman
Carthage
Cash
Castleton
Cazenovia
Champaign
Chatauqua
Chestervale
Chillicothe
Civer
Clinton
Coal Valley
Coatsburg
Colchester
Colmar
Colusa
Congerville
Cook's Landing
Cooper
Copperas Creek
Covel
Cramers
Crampton
Crandall
Crescent
Croft
Crooked Creek Landing
Cruger
Cuba
Dahinda
Dallas City
Dana
Danvers
Decorra
Deer Creek
Delavan
De Long
Douglas
Downs
Ducey
Duck Island
Duncan (Stark Co.)
Dunfermline
Dunlap
Durang Town
Earls
East Fort Madison
East Galesburg
East Louisiana
East Peoria
Edelstein
Eden
Edwards
Eleanor
Elkins
Elm
Elmwood
El Paso
Emden
Empire
Enright
Epperson
Eureka
Evans (Logan Co.)
Ewbanks
Fairview
Fall Creek
Farmdale
Farmer City
Farmington
Ferris
Fiat
Fithian
Florence
Ford Woods
Forest City
Forty Mile Landing
Forty-eight Landing
Fowler
Fryvert
Frederick
Galesburg
Gales Farm
Galva
Gardena
Garmans
Gerlaw
Gibbs Spur
Gilchrist
Gillum
Gilson
Gladstone
Glasford
Glasgow Landing
Glover
Golden
Goodfield
Good Hope
Gordons
Grand Pass
Green
Green Oak
Green Valley
Gridley
Griggsville Landing
Groveland
Haas
Hanna
Harness
Harris
Harris Landing
Hartsburg
Havana
Hegeler
Henderson
Hendrix
Hennepin
Henry
Hermon
Heyworth
Holmes
Holmes Landing
Hopedale
Hopewell
Hortons
Hulls
Ipava
Johnsons Switch
Joy
Kamps Creek
Kampsville
Kasbeer
Keithsburg
Keller
Kerfoot
Kewanee
Kingston Mines
Kirkwood
Knox
Knoxville
Lacon
Ladd
La Fayette
La Grange Landing
La Grange Locks
La Prairie
Larchland
La Rose
La Salle
Laura
Le Roy
Leslie
Lewistown
Lilly
Lincoln
Little York
Liverpool
Lomax
Lombardville
London Mills
Long Point
Loraine
Low Point
Lucas
Lynn
McIntosh
McKeys
Mackinaw
Macomb
Macoupin Creek
Mahomet
Malden
Manito
Mansfield
Mapleton
Maquon
Marblehead
Marietta
Marquette
Mason City
Maxwell
Mayview
Media
Mendon
Menert
Meredosia
Metamora
Middle Grove
Middletown
Milan
Milroy
Mindale
Mineral
Minier
Minonk
Monica
Monmouth
Montezuma
Moon
Morris
Morton
Mossville
Muncie
Mungers
Naples
Natrona
Nebo
Nekoma
Nemo
Neponset
New Boston
New Canton
New Holland
New Philadelphia
New Windsor
Nine Mile Landing
Normal
Norris
North Hampton
OakHill(PeoriaCo.)
Oakwood
Ogden
Ogle
Oneida
Opheim
Oquawka
Orchard Mines
Orion
Ormonde
Osco
Ottawa
Paloma
Parkland
Pearl
Pekin
Peoria Heights
Peru
Phelps
Pike
Pleasant Hill
Plymouth
Ponemah
Pontoosuc
Porter
Prairie City
Pre-emption
Princeton
Princeville
Pump House Landing
Putnam
Quincy
Radnor
Randolph
Rapatee
Rawalts
Ray
Reed City
Reynolds
Richmond
Rio
Rising
Roanoke
Rock Creek
Rockport
Rome
Roseville
Rumpler
Rushville
St. Augustine
St. David
St. Joseph
Saluda
San Jose
Sankoty
Sciota
Scottsburg
Sears
Seaton
Secor
Seehorn
Sharpe Landing
Shinn
Sixty-four Landing
Smithfield
Smithshire
Snells
Snicarte
Somers Switch
South Beardstown
South Pekin
Sparland
Spring Bay
Spring Lake
Spring Valley
Stanford
Stark
Stillwell
Stoehrs
Streator
Stronghurst
Summit
Surrey
Sutter
Swan Creek
Table Grove
Tampico
Taylor Ridge
Tennessee
Thirty-eight Mile Landing
Thirty-six Mile Landing
Tiskilwa
Topeka
Toulon
Tremont
Trivoli
Twenty Mile Landing
Twenty-five Mile Landing
Twin Grove
Ulah
Union (Logan Co.)
Urbana
Ursa
Utica
Valley City
Varna
Vermont
Victoria
Viola
Wady Petra
Walnut
Walnut Grove
Wapella
Washburn
Washington
Wataga
Watkins
West Matanzas
West Point
West Point Landing
Wilbern
Williamsfield
Willow Island
Wilmert
Wilson Island
Winkle
Woodhull
Woodruff
Woodville
Wyanet
Wyoming
Yates City
Youngstown
Yuton
Zearing

(Concluded on following page)

⑮ For account of the C. C. C. & St. L. Ry., applies only on grain and articles taking same rates (see Note 5, page 90 of tariff), when originating at C. C. C. & St. L. Ry. stations, Gillum, Ill., to Danville, Ill., inclusive (Station Nos. 2785 to 2905), and re-shipped from Bloomington, Ill., via the C. C. C. & St. L. Ry.

Note 35

EXCEPTION Concluded

List of tariffs naming proportional rates on Grain from Illinois points named on page 98 of tariff, as amended, to Bloomington, Peoria and Pekin, Ill.

Issuing Line or Agent	Tariff No.	I. C. C. No.	Item, Index or Reference]No.
Alton R. R.	1604-M	132	Item 220.
A. T. & S. F. Ry.	7124-I	13039	Item Nos. 165, 170, 175, 180, 185 and 190.
C. B. & Q. R. R.	G. F. O. 1346-Q	18831	Note 2, page 45.
C. & I. M. Ry.	5-H	B-278	Page 11.
C. & N. W. Ry.	G. F. D. 17042-A	10584	Circle Reference ②, page 17.
C. R. I. & P. Ry.	34560-A	C-12579	Item 300.
C. S. & St. L. Ry.	39 (C. S. & St. L. Ry.)	35	
C. C. C. & St. L. Ry.	1370-D	8855	
I. C. R. R.	1537-K	A-11148	Index Nos. 396 and 502 to 510, incl.
Ill. T. R. R.	480-E	194	Index Nos. 64 to 101, 135 to 144, Incl.
Ill. River Packet Co.	41-O	66	Note B
M. & St. L. R. R.	1590-H	B-840	Pages 59 and 60.
N. Y. C. & St. L. R. R.	G. F. D. 15-T	5776	Note 7.
P. & P. U. Ry.		66	Item No. 330.
P. T. Co.	19-F	9	Item No. 320.
Pennsylvania R. R.	73-B	1861	
Spring Lake Packet Co.		59	
T. P. & W. R. R.	155-Y	174	

Note 40

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWESTERN TERRITORY

Where reference is made to this Note, rates apply as re-shipping or proportional rates on traffic reaching the re-shipping point via a rail †††transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points in **Northwestern Territory** (as described below and on pages 100 and 101 of tariff, as amended), from which no through joint commodity rates are in effect in connection with the inbound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point be less than the local rate from the re-shipping point to destination; the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

Rates named from **Bloomington, Ill.**, subject to this Note, will not apply on traffic originating at points named on page 117 of tariff.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

DOMINION OF CANADA—**All stations in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.**

IDAHO—**All stations, except when routed via Missouri River Crossings (See Note 110, page 106 of tariff), or via routes operating through points south thereof.**

MICHIGAN—**(Upper Peninsula)**—**Stations as follows:**

Barclay	Emerson	Leo	Robbins	Thomaston
Bergland	Ewen	Marenisco	Robinson	Trout Creek
Bessemer	Gogebic	Montreal	St. Collins	Tula
Black River	Hartley's	Murphy	Sidnaw	Vermilac
Bruce's Crossing	Ironwood	Nestoria	Spur No. 3	Verona
Choate	Kenton	Newport Siding	Spur A-40	Wakefield
Covington	King Lake	Paulding	Spur 275	Watersmeet
Craigsmere	Kitchi	Paynesville	Stickley	Watton
Dublin	Lake Gogebic	Ramsay	Thayer	Wellington
Dunham				

(Continued on following page)

†††Application via water transportation **eliminated**; rates (not re-shipping or proportional) published in tariff, as amened, will apply.

Note 40

NORTHWESTERN TERRITORY Continued

MINNESOTA All stations.

MONTANA All stations, except when routed via Missouri River Crossings (See Note 110, page 106 of tariff), or via routes operating through points south thereof.

NORTH DAKOTA All stations.

OREGON All stations, except the following when routed via Missouri River Crossings (See Note 110, page 106 of tariff), or via routes operating through points south thereof.

Arcadia, Cairo, Huntington, Mallet, Nyssa, Ontario and Vale

SOUTH DAKOTA All stations, except as follows:

Alcester.	Chester.	Flandreau.	Lennox.	Parkston.	Tabor.
Alexandria.	Chilson.	Forestburg.	Lestervile.	Peaks.	Talmo.
Alpena.	Colman.	Fort Pierre.	Letcher.	Philip.	Tea.
Ardmore.	Colone.	Freeman.	Loomis.	Piedmont.	Teton.
Argonne.	Colton.	Fruitdale.	Loring.	Plankinton.	Tilford.
Argyle.	Conata.	Fullerville.	Lyman.	Platte.	Trent.
Armour.	Corsica.	Fulton.	Lyons.	Pluma.	Tripp.
Artesian.	Corson.	Garretson.	McCook.	Plumb.	Trojan.
Asylum Track.	Cottonwood.	Gayville.	Madison.	Powell.	Tuscan.
Avon.	Creston.	Geddes.	Marietta.	Presho.	Tyndall.
Baltic.	Crooks.	Gregory.	Marion Jct.	Pringle.	Underwood.
Beardsley.	Custer.	Harrisburg.	Mayo.	Provo.	Unityville.
Belle Fourche.	Cuthbert.	Hartford.	Meckling.	Pukwana.	Utica.
Belvidere.	Dallas.	Hermosa.	Menno.	Quinn.	Vale.
Benclare.	Dante.	Herrick.	Midland.	Ramona.	Valley Springs.
Beresford.	Davis.	Hill City.	Minnekahta.	Rapid City.	Van Metre.
Berne.	Deadwood.	Hill Siding.	Mission Hill.	Ravinia.	Vermillion.
Betts.	Dell Rapids.	Hooker.	Mitchell.	Redfern.	Viborg.
Black Hawk.	Delmont.	Hot Springs.	Monroe.	Redwater Siding.	Vilas.
Blacktail.	Dewey.	Howard.	Montrose.	Reliance.	Virgil.
Bonesteel.	Dimock.	Hudson.	Morefield.	Renner.	Vivian.
Booge.	Dolton.	Humboldt.	Mosher.	Riverside.	Volin.
Bovee.	Draper.	Huntimer.	Mt. Vernon.	Rochford.	Wagner.
Box Elder.	Dumont.	Hurley.	Murdo MacKenzie.	Roswell.	Wakonda.
Brandon.	East Sioux Falls.	Imlay.	Murphy.	Rowena.	Wall.
Bridgewater.	Edgemont.	Interior.	Mystic.	Rumford.	Wasp No. 2 Spur.
Buena Vista.	Egan.	Irene.	Nahant.	St. Charles.	Wasta.
Buffalo Gap.	Elk Point.	Ivanhoe.	Naomi.	St. Onge.	Wendte.
Burbank.	Ellis.	Janousek.	Newell.	Salem.	Wentworth.
Burdock.	Emery.	Jefferson.	Nisland.	Scenic.	Wessington Springs.
Burke.	Englewood.	Junius.	Nowlin.	Scotland.	Weta.
Burton.	Erskine.	Kadoka.	Oacoma.	Shindlar.	White Lake.
Canistota.	Esmond.	Kaylor.	O. D. Siding.	Siding No. 11.	Whitewood.
Canova.	Ethan.	Kennebec.	Oelrichs.	Sioux Falls.	Winfred.
Canton.	Evans Siding.	Keystone.	Okaton.	Smithwick.	Winner.
Capa.	Fairburn.	Kimball.	Oldham.	Spencer.	Witten.
Caputa.	Fairfax.	Kingsburg.	Oral.	Springfield.	Wood.
Carthage.	Fairview.	Kirk.	Oreville.	Stamford.	Woonsocket.
Centerville.	Farmer.	Lake Andes.	Owanka.	Stickney.	Worthing.
Chamberlain.	Farmingdale.	Lane.	Parker.	Sturgis.	Yankton.
Chancellor.	Fedora.	Lead.			

WASHINGTON All stations.

WISCONSIN Stations as follows:

Albertville	Beldenville	Cadott	Cylon	Fennimore
Allouez	Bennett	Cameron	Dallas	Fifield
Alma	Benoit	Canton	Dauby	Forest City
Almena	Benson	Caryville	Dedham	Foxboro
Altoona	Bibon	Catawba	Deer Park	Frederic
Amery	Birch	Cedar	Deronda	Galesville
Amnicon Falls	Birchwood	Central Ave.	Dewey	Gays Mills
Anson	Bloomer	Centuria	Donald	Gilman
Arnold	Blueberry	Chaseburg	Downing	Glen Flora
Ashland	Blue River	Chelsea	Downsville	Glenwood City
Ashland Jct.	Bluff Siding	Chetek	Dresser Jct	Glidden
Athens	Boardman	Chippewa Falls	Drummond	Glover
Atwood	Boscobel	Clark	Dunnville	Gordon
Augusta	Boyceville	Clayton	Durand	Grand Crossing
Avoca	Boyd	Clear Lake	Eagle Point	Grandview
Baldwin	Boylston	Cobban	Earl	Grantsburg
Barksdale	Bridgeport	Cochrane	Eau Claire	Gurney
Barnum	Brill	Colfax	Edminster Spur	Hager
Barron	Bruce	Comstock	Eleva	Hammond
Barronett	Brule	Coon Valley	Elk Mound	Hannibal
Bateman	Brunet	Corneil	Ellsworth	Haugen
Bay City	Burkhardt	County Line	Elmwood	Hawkins
Bayfield	Buttermut	Cumberland	Emerald	Hawthorne
Beebe	Cable	Cutter	Fall Creek	Hayward

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Note 40

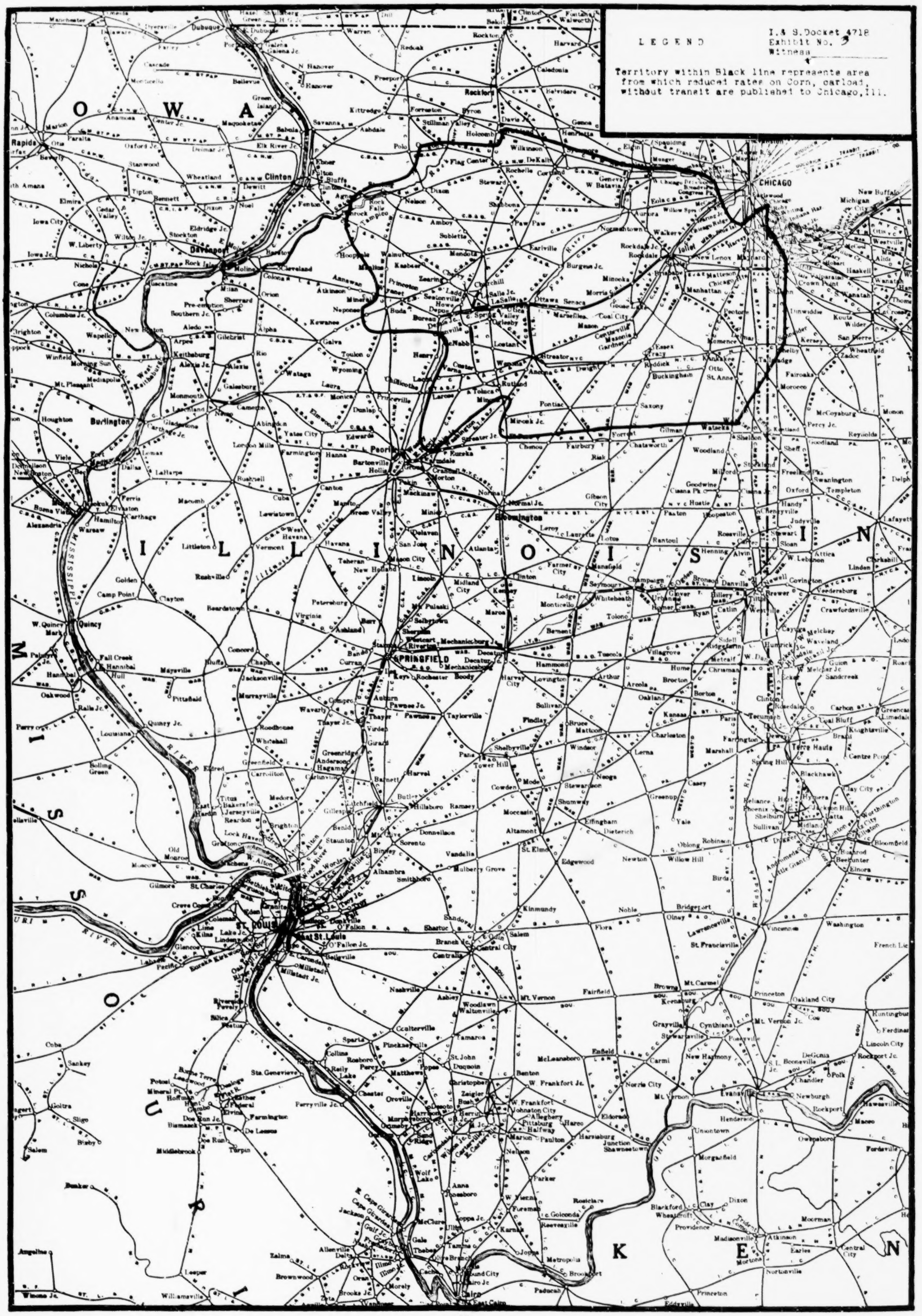
NORTHWESTERN TERRITORY—Concluded

WISCONSIN—Stations as follows Concluded:

Hersey	Linderman	Osseo	Saunders	Superior (East End)
High Bridge	Lone Rock	Park Falls	Sauntry	Sweden
Hillsboro	Luck	Pearson	Savoy	Teegarden
Hillsdale	Lytles	Pembine	Saxon	Thorpe
Hines	Maiden Rock	Pennington	Sedgwick	Tony
Holcombe	Maple	Pepin	Seeleys	Topside
Houghton	Marengo	Petersburg	Shell Lake	Tramway
Howard	Marshland	Phillips	Sioux	Trego
Hoyt	Mason	Phipps	Soldiers Grove	Trempealeau
Hudson	Maxwell	Pine Creek	Solon Springs	Trevino
Hurley	Medford	Platteville	Somerset	Truax
Ingram	Mellen	Pokegama	South Range	Turtle Lake
Ino	Menomonie	Poplar	South Superior Yards	Tuscobia
Ipswich	Menomonie Jct.	Porter's Mills	Spider	Twin Bluffs
Iron Belt	Midway	Poskin	Spooner	Upson
Iron River	Mikana	Prairie du Chien	Spring Brook	Van Buskirk
Itasca	Milltown	Prentice	Spring Green	Viola
Jewett	Minong	Prescott	Spring Valley	Viroqua
Jim Falls	Mondovi	Prescott Road	Spur No. 161	Wascott
Joel	Moquah	Price	Spur No. 304	Washburn
Kennan	Morse	Readstown	Stanley	Wauzeka
Kimball	Muscoda	Red Cedar	Stanton	Wentworth
Knapp	Muskeg	Requa	State Line Tower	Westboro
La Crosse	Nelson	Rice Lake	Stearns	Westby
Ladysmith	New Auburn	Richland Center	Steuben	Weston
La Farge	New Richmond	Ridgeland	Stinnett	Weyerhaeuser
Lakeside	North La Crosse	River Falls	Stitzer	Wheeler
Lampson	Northline	Roberts	Stockholm	White River
Lancaster	Nye	Rockmont	Stoddard	Wiehe
Larson Spur	Odanah	Rufus	Strickland	Wildwood
Lehigh	Ogema	St. Croix Falls	Strum	Wilson
Leonards	Onalaska	Salmo	Summit	Woodman
Liberty	Osceola	Sarona	Superior	Woodville

The changes shown above as made in Supplement 67 are under suspension in I.&.S.Docket 4718, until May 15,1940,per supplement 68,Agent B.T. Jones Tariff 245-F,I.C.C.3055.

ILLINOIS JUNCTION POINTS



I. & S. Docket 4718
Exhibit No. 4
Witness

Statement

Showing Intrastate rates on Corn, Carload (Published to meet Water and Motor Truck competition) as compared with Interstate local rates on Grain, including Corn, Carload, from points in Illinois, except as shown to Chicago, Illinois.

(Rates in Cents per 100 Pounds)

ILLINOIS ORIGINS (Except as otherwise provided)	Inter-State	Intra-State
ALTON R.R.		
Summitt	7	5
Argo	7	5
Willow Springs	7.5	5
Lemont	7.5	5
Lockport	8	5
Joliet	8.5	5
Plaines	8.5	5.5
Millsdale	8.5	5.5
Blodgett	9.5	5.5
Lorenzo	9.5	5.5
Piquot	9.5	5.5
Coal City	9.5	5.5
Elwood	8.5	5.5
Prairie Creek	9.5	5.5
Wilmington	9.5	5.5
Braidwood	9.5	5.5
Braceville	9.5	5.5
Mazonia	10	5.5
Gardner	10	5.5
Dwight	10	6
Nevada	10	6
Blackstone	10	6.5
Smithdale	10	7
Streator	12	7
Munster	12	7.5
Garfield	12	8
Wenona	12	8.5
Evans	12	8.5
Custer	12	8.5
Varna	12	8.5
Held	12	-
Lacon	12	-
La Rose	12	8.5
Washburn	12	9.5
Low Point	12	10.5
Cazenovia	12	11.5
A.T.& S.FE RY.		
Willow Springs	8	5
Palisades	8.5	5
Lemont	8.5	5
Romeo	8.5	5
Lockport	8.5	5
Joliet	8.5	5
Millsdale	8.5	5.5
Drummond	9.5	5.5
Blodgett (Wills Co.)	9.5	5.5
Lorenzo	9.5	5.5
Piquot	9.5	5.5
Coal City	9.5	5.5
Gorman	10	5.5
Mazon	10	5.5

	Inter-State	Intra-State
A.T.& S.FE RY.		
Verona	10	6
Kinsman	10	6
Ransom	10	6.5
Kernan	10	7
Beneckendorf Spur	10	7
Streator	12	7
Moore	12	7.5
Ancona	12	8
Leeds	12	8.5
Toluco	12	8.5
La Rose	12	8.5
Long Point	12	8.5
Dana	12	9.5
C.& E.I. RR.		
Steger	8.5	5.5
Crete	8.5	5.5
Lincoln Fields	8.5	6
Goodenow	8.5	6
Beecher	8.5	6
Sollitt	8.5	6
Grant Park	8.5	6
Momence	8.5	8
Law's Switch	10	6.5
Koster	10	6.5
Wichert	10	6.5
St. Anne	10	6.5
Papinau	10.5	7
Martinton	12	7.5
Pittwood	12	8.5
Talmadge	10	6.5
Hopkins Park	10	6.5
C&N.W. RY.		
Elmhurst	7.5	6
Villa Park	7.5	6
Lombard	7.5	6
Glen Ellyn	7.5	6
Wheaton	7.5	6
Wenfield	8	6
West Chicago	8	6
Geneva	8.5	6
La Fox	8.5	7
Elburn	8.5	8
Maple Park	9.5	8.5
Cortland	9.5	9
De Kalb	9.5	9
Malta	10	9
Creston	10.5	9.5
Rochelle	10.5	10
Flagg	10.5	10

ILLINOIS ORIGINS (Except as otherwise provided)	Inter-State	Intra-State
C.&N.W. RY.		
Ashton	11.5	10.5
Franklin Grove	12	10.5
Nachusa	12	10.5
Dixon	12	10.5
Nelson	12	11
Sterling (Rock Falls)	13	11.5
Galt	13	12
Agnew	13	12.5
St. Charles	8.5	6
Batavia	8.5	6
Aurora	8.5	6
North Aurora	8.5	6
Herbert	10.5	10
Sycamore	9.5	9
Elva	10	8.5
McGirr	10	8.5
Shabbona Grove	10	8.5
Rollo	10	8.5
Earlville	10.5	8.5
Triumph	11	8.5
Troy Grove	11	8.5
Brayson	11	8.5
Churchill	12	9.5
Ladd	12	9.5
Seatonville	12	9.5
LaSalle Junction	12	9.5
Dalzell	12	9.5
Shaft No. 2	12	9.5
Spring Valley	12	9.5
Van Petten	12	10.5
Hahnaman	12	10.5
Normandy	12	10.5
Manlius	12	10.5
Langley	12	10.5
Buda	12	11
Morse	12	11.5
C.B.&Q. R.R.		
Clyde	7	6
Berwyn	7	6
Riverside	7.5	6
Brookfield	7.5	6
Congress Park	7.5	6
La Grange (Stone Ave)	8.5	6
Western Springs	8.5	6
Hinsdale	8.5	6
Clarenden Hills	8.5	6
Westmont	8.5	6
Fairview Ave.	8.5	6
Downers Grove	8.5	6
Belmont	8.5	6
Lisle	8.5	6
Naperville	8.5	6
Ecla	8.5	6
Aurora	8.5	6
Montgomery	8.5	6
Bristol	9.5	7.5
Plano	9.5	8
Sandwich	9.5	8
Somonauk	9.5	8
Leland	10.5	8.5
Earlville	10.5	8.5
Meriden	11.5	8.5
Mendota	11.5	9
Clarion	11.5	9
Arlington	12	9.5
Zearing	12	9.5
Malden	12	9.5
Princeton	12	10
Wyanet	12	10.5
Buda	12	11
Neponset	12	11.5
North Aurora	8.5	6
Batavia	8.5	6
West Chicago	8	6
Baker	10.5	8
Oswego	8.5	6
Yorkville	9.5	6.5
Fox	9.5	6.5
Millbrook	9.5	6.5
Millington	9.5	7
Sheridan	9.5	7.5
Burgess Jct.	9.5	7.5
Serena	9.5	7.5
Blakes	10	7.5
Wedron	10	7
Dayton	10	6.5
Ottawa	10	5.5
So. Ottawa	10	5.5
Grand Ridge	10	6.5
Richards	10	7
Streator	12	7
Kangley	12	7.5
Wilsman	12	8
Leonore	12	8
Lowell	12	8.5
Ticona	12	8.5
La Salle	12	9
Peru	12	9
Spring Valley	12	9.5
Hegeler	12	9.5
Ladd	12	9.5
Green Oak	12	10
Kasbeer	12	10.5
Walnut	12	10.5
Deer Grove	12	10.5
Tampico	13	11.5
Prophetstown	12	12.5
Sugar Grove	8.5	7.5
Big Rock	9.5	8
Hinckley	9.5	8.5
Waterman	10	8.5
Shabbona	10	8.5
Lee	10.5	9
Steward	10.5	9.5
Rochelle	10.5	10
Flag Center	10.5	10
Chana	11	10.5
Honey Creek	12	11
Oregon	12	11
Stratford	13	12.5
Niffa	8.5	6
Mooseheart	8.5	6

ILLINOIS ORIGINS (Except as otherwise provided)	Inter-State	Intra-State
C.B.&Q. R.R.		
Mt. Morris	12	11.5
Radley	10.5	8.5
Paw Paw	11	8.5
Compton	11	9
West Brooklyn	12	9.5
Shaws	12	10
Amboy	12	10.5
Walton	12	10.5
Harmon	12	10.5
Stone	12	11
Rock Falls	13	11.5
Sterling	13	11.5
Agnew	13	12.5
Wendell	11.5	9.5
La Moille	12	10
Van Orin	12	10
Ohio	12	10.5
Burnett	12	11.5
Lombardville	12	11.5
C.G.W. RR.		
Forrest Park	7	6
Maywood	7	6
Bellwood	7	6
Elmhurst	7.5	6
Villa Park	7.5	6
Lombard	7.5	6
North Glen Ellyn	7.5	6
Gretna	8	6
Ingalton	8	6
St. Charles	8.5	6
Wasco	8.5	7
Lily Lake	8.5	8
Virgil	9.5	8.5
Richardson	9.5	8.5
Lovell's Crossing	9.5	9
Sycamore	9.5	9
DeKalb	9.5	9
Wilkinson	9.5	9
Clare	9.5	9
Esmond	10.5	9.5
Lindenwood	10.5	10
C.M.ST.P. & P. RR		
Baker	8.5	6
Manhattan	8.5	6
Wilton	8.5	6
Andres	8.5	6
Peotone	8.5	6
Whitaker	8.5	6
Yeager	8.5	6
Momence	8.5	6
Aurora	8.5	6
Wilkinson	9.5	9
Bradt	9.5	8½
DeKalb	9.5	8
Chase	9.5	8
Troxel	9.5	8
Duffin	9.5	8

	Inter-State	Intra-State
C.M.ST. P. &. P. RY.		
Fairdale	10.5	10
Monroe Center	10.5	10
Flag Center	10.5	10
Rochelle	10.5	9.5
Steward Jct.	10.5	9.5
Scarboro	10.5	9
Roxbury	12	8.5
Welland	12	8.5
Mendota	12	8
Peterstown	12	8.5
Fitchmoor	12	8.5
Ladd	12	8.5
Cherry	12	8.5
Seatonville	12	8.5
Howe	12	9
De Pue	12	9
Moronts	12	9
Grandville	12	9
Standard	12	9
Cedar Point	12	9
Oglesby	12	9
C.R.I.&P.RY.		
Midlothian	6.5	5
Oak Forest	6.5	5
Tinley Park	7.5	5
Mokena	8	5
New Lenox	8	5
Joliet	8.5	5
Bird's	8.5	5
Monooka	8.5	5
Morris	9.5	5
Stockdale	9.5	5.5
Seneca	9.5	5.5
Langham	9.5	5.5
Marseilles	10	5.5
Breckton	10	5.5
Ottawa	10	5.5
Utica	11	6.5
La Salle	12	9
Peru	12	9
Spring Valley	12	9.5
Marquette	12	9.5
De Pue	12	9.5
Bureau	12	10.5
Tiskillwa	12	10.5
Wyanet	12	10.5
Sheffield	12	11
E. J. & E. RY.		
Caton Farm	8.5	5.5
Frontenac	8.5	6
Joliet	8.5	5.5
Mincoka	8.5	5.5
Normantown	8.5	6
Plainfield	8.5	5.5
Wolfs	8.5	6

ILLINOIS ORIGINS (Except as otherwise provided)	Inter-State	Intra-State
ILL. CENT. RR.		
Flossmoor	7.5	5.5
Matteson	8	5.5
Richton	8	5.5
Monee	8	5.5
Peotone	8.5	6
Manteno	8.5	6
Manteno Hospital	8.5	6
Indian Oaks	8.5	6
Bradley	8.5	6
Kankakee	8.5	6
Hospital	9	6
Otto	9	6
Chepanse	9	6.5
Clifton	9.5	7.5
Ashkum	11	8.5
Danforth	12	9.5
Irwin	9	6.5
Dickey's	9.5	7
Herscher	9.5	7
Buckingham	10.5	7
Cabery	11.5	8
Kempton	12	8.5
Cullom	12	9
Charlotte	12	10
Griswold	12	9
Scoval	12	9
Eylar	12	9
Rugby	12	9.5
Swygert	12	9.5
Pontiac	12	9.5
Rook's Creek	12	10
Graymont	12	10
Flanagan	12	11
Hillside	7.5	6
Elmhurst	7.5	6
So. Addison	7.5	6
Swift	7.5	6
Cloverdale	8	6
Dixon	12	10.5
Eldena	12	10.5
Amboy	12	10.5
Sublette	12	10
Henkel	12	9.5
Mendota	12	9
Culton	12	8.5
Demick	12	8.5
LaSalle	12	9
Oglesby	12	9
Ionia	12	8.5
Lostant	12	8.5
Wenoa	12	8.5
Rutland	12	8.5
L.S.& B. C.		
LaSalle	12	9
Hegler	-	9
Thoralk	-	9
Midway	-	9

		Inter-State	Intra-State
MICH. CENT. RR.			
Dyer	Ind.	8.5	† 5
Chicago Heights		8.5	† 5
Matteson		8.5	† 5
Frankfort		8.5	† 5
Spencer		8.5	† 5
Steele		8.5	† 5
Joliet		8.5	† 5
N.Y.C. RR.			
Illinoi		8.5	6
Edgtown		8.5	6
Delmar		8.5	6
Ward		8.5	6
Momence		8.5	6
Eldredge Siding		8.5	6
Exline		8.5	6
Grinell		8.5	6
Kankakee		8.5	6
W. Kankakee		8.5	6
Greenwich		8.5	6
Van Siding		10	6
Lehigh		10	6
Goodrich		10	6
Union Hill		10	6
Reddick		10	6
Blair		10	6
Dwight		10	6
Sunbury		10	6
Adams		10	6
Budd		10	6
Misal		10	7
Streator		12	7
Vulcan Works		12	8
Altmar		12	8
Milla		12	8
Lastant		12	8.5
Priscilla		12	8.5
McNab		12	8.5
Granville		12	8.5
Moronts		12	8.5
De Pue		12	8.5
Howe		12	8.5
Seatonville		12	8.5
Ladd		12	8.5
Churchill		12	8.5
Highland	Ind.	8.5	5
Hays	Ind.	8.5	5
Hartsdale	Ind.	8.5	5
St. John	Ind.	8.5	6
Cook	Ind.	8.5	6
North Hayden	Ind.	8.5	6
Belshaw	Ind.	8.5	6
Schneider	Ind.	8.5	6

† Applicable on interstate traffic only.

ILLINOIS ORIGINS (Except as otherwise provided)	Inter-State	Intra-State
WABASH RY.		
Worth	7.5	5.5
Palos Park	7.5	5.5
Orland Park	7.5	5.5
Alpine	8	5.5
Marley	8	5.5
Steele	8	5.5
Brisbane	8	5.5
Manhattan	8.5	6
Symerton	9.5	6
Ballou	9.5	6
Ritchie	9.5	6
Custar Park	9.5	6
Horse Creek	9.5	6
Essex	10	6
Peddick	10	6
Cardiff	10	7
Campus	10.5	7
Emington	12	8
Saunemin	12	9
Wing	12	10
Champlin	12	10.5
Lodemia	12	10.5
Mc Dowell	12	10.5
Pontiac	12	9.5

TARIFF AUTHORITY

Alton R.R.	1604-O	I.C.C.	NO.	208	ILL.	CC	No.	122
A.T.&S. Fe. Ry.	7124-I	"	"	13039	"	"	"	608
C.&E.I. RR.	605	"	"	487	"	"	"	352
C&NW Ry. GFD	17042-B	"	"	10816	"	"	"	832
C.B.&Q. Ry. GFD	1346-R	"	"	19265	"	"	"	1956
C.G.W. RR.	36-J	"	"	5488	"	"	"	277
C.M.St.P.&P. RR	17002-B	"	"	B-6673	"	"	"	475
C.R.I.&P. Ry.	34560-B	"	"	C-12847	"	"	"	732
E.J.&E.Ry.	140-B	"	"	2243	"	"	"	604
Ill.Cent. RR	1537-K	"	"	A-11148	"	"	"	A-1520
NYC RR	9297-J	"	"	MC 6002	"	"	"	MC 731
NYC RR	643-B	"	"	LS 1939	"	"	"	LS 965
Wabash Ry.	B-19308	"	"	7130	"	"	"	1047

I. & S. Docket 4718
Exhibit No. 5
Witness

Statement

Showing present Combination rates (Barge-Rail) via Chicago, Ill., on Grain, C/L., from LaSalle, Morris, Ottawa and Seneca, Ill. to Baltimore, Md., New York, N. Y., and Boston, Mass., in comparison with present All-Rail Local rates from Chicago, Ill. and east thereof which are higher than the Rail-Barge combination via Chicago, Ill.

(Rates in cents per 100 Pounds)

FROM	TO	Baltimore, Md.								New York, N.Y.								Boston, Mass.							
		Miles		All Rail Rate			Barge - Rail Charge			Miles		All Rail Rate			Barge - Rail Charge			Miles		All Rail Rate			Barge - Rail Charge		
		All Rail	(1) Barge Rail	Domestic	Export (A)	Export (B)	Domestic	Export A	Export B	All Rail	(1) Barge Rail	Domestic	Export (A)	Export (B)	Domestic	Export A	Export B	All Rail	(1) Barge Rail	Domestic	Export (A)	Export (B)	Domestic	Export A	Export B
LaSalle	Ill.	835	864	38	34	28				958	987	38	35½	29½				1044	1070	40	35½	29½			
Morris	"	797	825	32½	31½	25½				921	948	35½	33	27				1007	1031	37½	33	27			
Ottawa	"	820	849	33	32	26	4 1/8	4 1/8	4 1/8	943	972	36	33½	27½	4 1/8	4 1/8	4 1/8	1029	1055	38	33½	27½	4 1/8	4 1/8	4 1/8
Seneca	"	809	836	32½	31½	25½	23	22	16	931	959	35½	33	27	26	23 1/2	17 1/2	1017	1042	37½	33	27	28	23 1/2	17 1/2
		To Chicago, Ill. via Barge Rail & 5 Rate beyond																							
		Total					27 1/8	26 1/8	20 1/8						30 1/8	27 5/8	21 5/8						32 1/8	27 5/8	21 5/8
C.M.St.P.																									
Chicago	Ill.			31½	30½	24½						34½	32	26						36½	32	26			
Gary	Ind.			31	30½	24½						34	32	26						36	32	26			
Millsboro	"			31	30	24½						34	31½	26						36	31½	26			
Walkerton	"			30	29	24½						33	30½	26						35	30½	26			
Wills	"	628	-	•27	27	24½				751	-	•30	28½	26				841	-	•32	28½	26			
Hicksville	Ohio	603	-	25	•25	24½				725	-	28	•26½	26				820	-	30	•26½	26			
Bethler	"			23	23	23						26	24½	24½						28	24½	24½			
Greenwich	"			22	22	22						25	23½	23½						27	23½	23½			
Lords'town	"	393	-	20	20	•20				513	-	23	21½	•21½				652	-	25	21½	•21½			
C.&E.RR. (Erie System)																									
Chicago	Ill.			31½	30½	24½						34½	32	26						36½	32	26			
Highlands,	Ind.			31	30½	24½						34	32	26						36	32	26			
Aldine	"			31	30	24½						34	31½	26						36	31½	26			
De Long	"			30	29	24½						33	30½	26						35	30½	26			
Unionda1e	"	627		•27	27	24½				755		•30	28½	26				855		•32	28½	26			
Aren	Ohio	601		25	•25	24½				730		28	•26½	26				828		30	•26½	26			
Lima	"			23	23	23						26	24½	24½						28	24½	24½			
Galion	"			22	22	22						25	23½	23½						27	23½	23½			
Lewvittsburg	"	396		20	20	•20				512		23	21½	•21½				646		25	21½	•21½			
[illegible] SYSTEM																									
Chicago	Ill.			31½	30½	24½						34½	32	26						36½	32	26			
[illegible]	"			31	30½	24½						34	32	26						36	32	26			
Union Mills	Ind.			31	30	24½						34	31½	26						36	31½	26			
South Bend	"			30	29	24½						33	30½	26						35	30½	26			
Durand	Mich	677		•27	27	24½				674		•30	28½	26				746		•32	28½	26			
Capac	"	621		25	•25	24½				618		28	•26½	26				704		30	•26½	26			
[illegible]																									
Chicago	Ill.			31½	30½	24½						34½	32	26						36½	32	26			
[illegible]	Ind.			31	30½	24½						34	32	26						36	32	26			
[illegible] Mich.	Mich			31	30	24½						34	31½	26						36	31½	26			
Dallen	"			30	29	24½						33	30½	26						35	30½	26			
Jackson	"	619		•27	27	24½				707		•30	28½	26				782		•32	28½	26			
Ann Arbor	"	593		25	•25	24½				668		28	•26½	26				743		30	•26½	26			

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TO / FROM			Baltimore, Md. Miles All Rail	Miles (1) Barge Rail	All Rail Rate Domestic	All Rail Rate Export (A)	All Rail Rate Export (B)	Barge-Rail Charge Domestic	Barge-Rail Charge Export (A)	Barge-Rail Charge Export (B)	New York, N. Y. Miles All Rail	Miles (1) Barge Rail	All Rail Rate Domestic	All Rail Rate Export (A)	All Rail Rate Export (B)	Barge-Rail Charge Domestic	Barge-Rail Charge Export (A)	Barge-Rail Charge Export (B)	Boston, Mass. Miles All Rail	Miles (1) Barge Rail	All Rail Rate Domestic	All Rail Rate Export (A)	All Rail Rate Export (B)	Barge-Rail Charge Domestic	Barge-Rail Charge Export (A)	Barge-Rail Charge Export (B)
N.Y.C. RR.																										
Chicago,	Ill.				31½	30½	24½						34½	32	26						36½	32	26			
Pine	Ind.				31	30½	24½						34	32	26						36	32	26			
LaPorte	"				31	30	24½						34	31½	26						36	31½	26			
South Bend	"				30	29	24½						33	30½	26						35	30½	26			
Kendallville	"		633		•27	27	24½				756		•30	28½	26				841		•32	28½	26			
Edgerton	Ohio		622		25	•25	24½				732		28	•26½	26				818		30	•26½	26			
Toledo	"				23	23	23						26	24½	24½						28	24½	24½			
Amherst	"				22	22	22						25	23½	23½						27	23½	23½			
Painesville	"		403		20	20	•20				541		23	21½	•21½				624		25	21½	•21½			
Elkhart	Ind.				30	29	24½						33	30½	26						35	30½	26			
Jonesville	Mich.		618		•27	27	24½				726		•30	28½	26				801		•32	28½	26			
Pittsford	"		604		25	•25	24½				714		28	•26½	26				789		30	•26½	26			
N.Y.C.&ST.L.R.R.																										
Chicago	Ill.				31½	30½	24½						34½	32	26						36½	32	26			
Hegewisch	Ind.				31	30½	24½						34	32	26						36	32	26			
Thomaston	"				31	30	24½						34	31½	26						36	31½	26			
Rutland	"				30	29	24½						33	30½	26						35	30½	26			
Ft. Wayne	"		621		•27	27	24½				744		•30	28½	26				839		•32	28½	26			
Payne	Ohio		599		25	•25	24½				723		28	•26½	26				817		30	•26½	26			
Leipsic	"				23	23	23						26	24½	24½						28	24½	24½			
Lorain	"				22	22	22						25	23½	23½						27	23½	23½			
Painesville	"		403		20	20	•20				541		23	21½	•21½				624		25	21½	•21½			
PENNA. R.R.																										
Chicago	Ill.				31½	30½	24½						34½	32	26						36½	32	26			
Gary	Ind.				31	30½	24½						34	32	26						36	32	26			
Hanna	"				31	30	24½						34	31½	26						36	31½	26			
Plymouth	"				30	29	24½						33	30½	26						35	30½	26			
Ft. Wayne	"		621		•27	27	24½				744		•30	28½	26				839		•32	28½	26			
Dixon	Ohio		601		25	•25	24½				734		28	•26½	26				833		30	•26½	26			
Lima	"				23	23	23						26	24½	24½						28	24½	24½			
Crestline	"				22	22	22						25	23½	23½						27	23½	23½			
Salem	"		424		20	20	•20				506		23	21½	•21½				676		25	21½	•21½			
P.M. RR.																										
Chicago	Ill.				31½	30½	24½						34½	32	26						36½	32	26			
Porter	Ind.				31	30½	24½						34	32	26						36	32	26			
New Buffalo	Mich.				31	30	24½						34	31½	26						36	31½	26			
St. Joseph	"				30	29	24½						33	30½	26						35	30½	26			
Howell	"		659		•27	27	24½				686		•30	28½	26				761		•32	28½	26			
So. Lyon	"		641		25	•25	24½				667		28	•26½	26				742		30	•26½	26			
WABASH RY.																										
Chicago	Ill.				31½	30½	24½						34½	32	26						36½	32	26			
Gary	Ind.				31	30½	24½						34	32	26						36	32	26			
Magee	"				31	30	24½						34	31½	26						36	31½	26			
North Liberty	"				30	29	24½						33	30½	26						35	30½	26			
Eddy	"		645		•27	27	24½				768		•30	28½	26				847		•32	28½	26			
Lima	Ohio		615		25	•25	24½				733		28	•26½	26				811		30	•26½	26			

Explanation of Reference Marks

(A) Applies on grain other than that shown in reference B below.

(B) Applies only on Barley, Corn, Oats, Rye, or Wheat.

• Point which clears combination via Chicago, Ill. by use of barge rate to Chicago, Ill and reshipping rate beyond.

(1) Federal Barge Line Circular 9-H, ICC 82 - Illinois Waterway Navigation Chart, published by U. S. Engineer Office, Chicago, Ill. - I.C.C. Docket 15879 (164 ICC 314, 483)

(2) ICC Docket 15879 (164 ICC314,483)

Tariff Authority

Agent B. T. Jones' Tariff 245-G, ICC No. 3356

I. & S. Docket 4718
Exhibit No. 6
Witness

LEGEND

(Solid Line) The Local Domestic rate on Grain from all points in C.F.A.Territory (Chicago,Ill.and East) west of this line are higher than the Barge-Rail combination via Chicago,Ill., from La Salle,Morris,Ottawa and Seneca,Ill. to Baltimore,Md., New York,N.Y. and Boston,Mass.

(Broken Line) The Local Export rate rate on Grain from all points in C.F.A.Territory (Chicago,Ill.and East) west of this line are higher than the Barge-Rail combination via Chicago, Ill., from La Salle,Morris,Ottawa and Seneca,Ill. to Baltimore, Md.,New York,N.Y. and Boston,Mass.

(Chain) The Local Export rate on Barley,Corn,Oats,Rye or Wheat from all points in C.F.A.Territory (Chicago,Ill. and East) west of this line are higher than the Barge-Rail combination via Chicago,Ill., from La Salle,Morris,Ottawa and Seneca,Ill. to Baltimore,Md.,New York,N.Y. and Boston,Mass.

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Rate History on Wheat, Carloads, from Minneapolis, Minn., and Kansas City, Mo., to Toledo, Ohio and New York, N.Y.
(Rates in Cents per 100 Pounds)

TO: TOLEDO, OHIO

Date	From - Minneapolis, Minn.									From Kansas City, Mo.									
	Basing Points						Basis	Tariff Authority		Basing Points									Basis
	Chicago, Ill.			Peoria, Ill.						Chicago, Ill.			Peoria, Ill.			St.Louis, Mo.			
	To	From	Thru	To	From	Thru		ICC NO.	Issued By	To	From	Thru	To	From	Thru	To	From	Thru	
March 15, 1910	10	8	18	10	8	18	-	10043 A-2504 1938	CM&ST.P.RY. LS&MS RY. LE&W RR.	12	6	18	10.5	7.5	18	9	9	18	-
Apr. 17, 1914	10	8.4	18.4	10	8.4	18.4	5% Increase (I&S DKT. #333) (Eastern Factor)	B-2774 A-3238 2639	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	6.3	18.3	10.5	7.8	18.3	9	9.3	18.3	(5% Increase (I&S DKT. #333) (Eastern Factor)
May 4, 1918	10	8.4	18.4	10	8.4	18.4	-	B-2774 LS-300 2639	CM&ST.P. RY. NYC RR. LE&W RR.	12	6.3	18.3	10.5	7.8	18.3	9	10	19	15% Increase (ExParte 57) (Eastern Factor)
May 8, 1918	10	9.5	19.5	10	8.4	18.4	15% Increase (ExParte 57) (Eastern Factor)	B-2774 LS-300 2639	CM&ST.P. RY. NYC RR. LE&W RR.	12	7.0	19	10.5	7.8	18.3	9	10	19	15% Increase (ExParte 57) (Eastern Factor)
May 15, 1918	10	9.5	19.5	10	9.5	19.5	15% Increase (ExParte 57) (Eastern Factor)	B-2774 LS-500 2658	CM&ST.P. RY. NYC RR. LE&W RR	12	7.0	19	10.5	8.5	19	9	10	19	15% Increase (ExParte 57) (Eastern Factor
June 28, 1918	12.5	12	24.5	12.5	12	24.5	25% Increase (G.O. #28)	B-2774 LS-500 2658	CM&ST.P.RY. NYC RR. LE&W RR.	15	9	24	13	10.5	23.5	11.5	12.5	24	25% Increase (G.O. #28)
Feb. 26, 1920	11	12	23	11	12	23	Adjustment	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.	15	9	24	13	10.5	23.5	11.5	12.5	24	-
Aug. 28, 1920	16	17	32	15	17	32	35% Increase (ExParte 74) (Western Factor) 40% Increase (ExParte 74) (Eastern Factor)	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.	20.5	12.5	33	17.5	14.5	32	15.5	17.5	33	35% Increase (GO #28) (Western Factor) 40% Increase (GO #28) (Eastern Factor)
Nov. 22, 1920	16	17	32	15	17	32	-	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.	20.5	12.5	33	18.5	14.5	33	15.5	17.5	33	Adjustment
Jan. 1, 1922	13.5	15.5	29	13.5	15.5	29	10% Reductions	B-4273 LS-833 3023	CM&ST.P. RY. NYC RR. NYC&ST.L. RR.	17.5	11.5	29	16.5	13.5	30	13.5	16	29.5	10% Reduction
Mar. 15, 1922	13.5	15.5	29	13.5	15.5	29	-	B-4273 LS-833 3023	CM&ST.P. RY NYC RR. NYC&ST.L. RR.	17.5	11.5	29	16.5	13.5	30	13.5	15.5	29	Adjustment

I. & S. Docket 4718
Exhibit No. 7
Witness

Rate History on Wheat, Carloads, from Minneapolis, Minn., and Kansas City, Mo., to Toledo, Ohio and New York, N.Y.
(Rates in Cents per 100 Pounds)

TO: TOLEDO, OHIO

From - Minneapolis, Minn.											From Kansas City, Mo.		
			Basing Points										
	Chicago, Ill.			Peoria, Ill.			St.Louis, Mo.						
Basis	To	From	Thru	To	From	Thru	To	From	Thru	Basis	Tariff Authority ICC NO.	Tariff Authority Issued By	
-	12	6	18	10.5	7.5	18	9	9	18	-	C-6918 A-2504 1938 D-70	CRI&P RY. LS&MG RY. LE&W RR. Agt. Wm.Cameron	
5% Increase (I&S DKT. #333) (Eastern Factor)	12	6.3	18.3	10.5	7.8	18.3	9	9.3	18.3	(5% Increase (I&S DKT. #333) (Eastern Factor)	C-9650 A-3238 2639 D-70	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron	
-	12	6.3	18.3	10.5	7.8	18.3	9	10	19	15% Increase (ExParte 57) (Eastern Factor)	C-9650 LS-300 2639 D-85	CRI&P Ry. NYC RR. LE&W RR. Agt. Wm.Cameron	
15% Increase (ExParte 57) (Eastern Factor)	12	7.0	19	10.5	7.8	18.3	9	10	19	15% Increase (ExParte 57) (Eastern Factor)	C-9650 LS-300 2639 D-85	CRI&P RR. NYC RR. LE&W. RR. Agt. Wm.Cameron	
15% Increase (ExParte 57) (Eastern Factor)	12	7.0	19	10.5	8.5	19	9	10	19	15% Increase (ExParte 57) (Eastern Factor	C-9650 LS-500 2658 D-85	CRI&P RY. NYC RR. LE&W RR. Agt. Wm.Cameron	
25% Increase (G.O. #28)	15	9	24	13	10.5	23.5	11.5	12.5	24	25% Increase (G.O. #28)	C-10041 LS-500 2658 D-85	CRI&P RY. NYC. RR. LE&W RR. Agt. Wm.Cameron	
Adjustment	15	9	24	13	10.5	23.5	11.5	12.5	24	-	C-10041 LS-606 3023	CRI&P RY. NYC RY. LE&W RR. Agt. Wm.Cameron	
35% Increase (ExParte 74) (Western Factor) 40% Increase (ExParte 74) (Eastern Factor)	20.5	12.5	33	17.5	14.5	32	15.5	17.5	33	35% Increase (GO #28) (Western Factor) 40% Increase (GO #28) (Eastern Factor)	C-10590 LS-606 3023 876	CRI&P RY. NYC RR. LE&W RR. Agt. Wm.Cameron	
-	20.5	12.5	33	18.5	14.5	33	15.5	17.5	33	Adjustment	C-10758 LS-606 3023 876	CRI&P RY. NYC RR. LE&W RR. Agt. Wm. Cameron	
10% Reductions	17.5	11.5	29	16.5	13.5	30	13.5	16	29.5	10% Reduction	C-10758 LS-833 3023 876	CRI&P. RY. NYC RR. NYC&ST.L Agt. Wm.Cameron	
-	17.5	11.5	29	16.5	13.5	30	13.5	15.5	29	Adjustment	C-10758 LS-833 3023 876	CRI&P RY. NYC RR. NYC&ST.L.RR. Agt. Wm.Cameron	
-	17.5	11.5	29	15.5	13.5	29	13.5	15.5	29	ICC DKT. #12929 of Nov. 31, 1921 as amended	C-10990 LS-833 3134 1217	CRI&P RY. NYC RR. NYC& ST.L. RR. Agt. W.J. Kelly	

From - Minneapolis, Minn.											From Kansas City, Mo.		
			Basing Points										
	Chicago, Ill.			Peoria, Ill.			St.Louis, Mo.						
Basis	To	From	Thru	To	From	Thru	To	From	Thru	Basis	Tariff Authority ICC NO.	Tariff Authority Issued By	
-	B-2774 10043 A-2504 1938	CM&ST.P.RY. LS&MS RY. LE&W RR.											
5% Increase (I&S DKT. #333) (Eastern Factor)	B-2774 A-3238 2639	CM&ST.P. RY. LS&MS RY. LE&W RR.											
-	B-2774 LS-300 2639	CM&ST.P. RY. NYC RR. LE&W RR.											
15% Increase (ExParte 57) (Eastern Factor)	B-2774 LS-300 2639	CM&ST.P. RY. NYC RR. LE&W RR.											
15% Increase (ExParte 57) (Eastern Factor)	B-2774 LS-500 2658	CM&ST.P. RY. NYC RR. LE&W RR											
25% Increase (G.O. #28)	B-2774 LS-500 2658	CM&ST.P.RY. NYC RR. LE&W RR.											
Adjustment	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.											
35% Increase (ExParte 74) (Western Factor) 40% Increase (ExParte 74) (Eastern Factor)	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.											
-	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.											
10% Reductions	B-4273 LS-833 3023	CM&ST.P. RY. NYC RR. NYC&ST.L. RR.											
-	B-4273 LS-833 3023	CM&ST.P. RY NYC RR. NYC&ST.L. RR.											
-	B-4273 LS-833 3134	CM&ST.P. RY. NYC RR. NYC&ST.L. RR.											

Feb. 26, 1920	11	12	23	11	12	23	Adjustment	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.	15	9	24	13	10.5	23.5	11.5	12.5	24	-	C-10041 LS-606 3023	CRI&P RY. NYC RY. LE&W RR. Agt. Wm.Cameron
Aug. 26, 1920	16	17	32	15	17	32	35% Increase (ExParte 74) (Western Factor) 40% Increase (ExParte 74) (Eastern Factor)	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.	20.5	12.5	33	17.5	14.5	32	15.5	17.5	33	35% Increase (GO #28) (Western Factor) 40% Increase (GO #28) (Eastern Factor)	C-10590 LS-606 3023 876	CRI&P RY. NYC RR. LE&W RR. Agt. Wm.Cameron
Nov. 22, 1920	16	17	32	15	17	32	-	B-4165 LS-606 3023	CM&ST.P. RY. NYC RR. LE&W RR.	20.5	12.5	33	18.5	14.5	33	15.5	17.5	33	Adjustment	C-10758 LS-606 3023 876	CRI&P RY. NYC RR. LE&W RR. Agt. Wm. Cameron
Jan. 1, 1922	13.5	15.5	29	13.5	15.5	29	10% Reductions	B-4273 LS-833 3023	CM&ST.P. RY. NYC RR. NYC&ST.L. RR.	17.5	11.5	29	16.5	13.5	30	13.5	16	29.5	10% Reduction	C-10758 LS-833 3023 876	CRI&P. RY. NYC RR. NYC&ST.L Agt. Wm.Cameron
Mar. 15, 1922	13.5	15.5	29	13.5	15.5	29	-	B-4273 LS-833 3023	CM&ST.P. RY NYC RR. NYC&ST.L. RR.	17.5	11.5	29	16.5	13.5	30	13.5	15.5	29	Adjustment	C-10758 LS-833 3023 876	CRI&P RY. NYC RR. NYC&ST.L.RR. Agt. Wm.Cameron
May 1, 1922	13.5	15.5	29	13.5	15.5	29	-	B-4273 LS-833 3134	CM&ST.P. RY. NYC RR. NYC&ST.L. RR.	17.5	11.5	29	15.5	13.5	29	13.5	15.5	29	ICC DKT. #12929 of Nov. 31, 1921 as amended	C-10990 LS-833 3134 1217	CRI&P RY. NYC RR. NYC& ST.L. RR. Agt. W.J. Kelly
June 1, 1922	13	15.5	28.5	13	15.5	28.5	Adjustment	B-4612 LS-833 3134	CM&ST.P. RY. NYC RR. NYC&ST.L. RR.	17.5	11.5	29	15.5	13.5	29	13.5	15.5	29	-	C-10990 LS-833 3134 1217	CRI&P RY, NYC RR. NYC&ST.L. RR. Agt. W.J. Kelly
July 1, 1935	12	15.5	27.5	12	15.5	27.5	ICC DOCKET- 17000 - Part 7	A-2590 2790	Agt.L.E.Kipp Agt.B.I.Jones	15	11.5	26.5	13	13.5	26.5	11	15.5	26.5	ICC Dkt. #17000 - Part 7	A-2590 2790	Agt. L.E.Kipp Agt. B.I.Jones
Jan. 15, 1938	12	13.5	25.5	12	13.5	25.5	ICC Dkt.#15037-	A-2743 2790	Agt. L.E.Kipp Agt. B.I.Jones	15	13.5	28.5	13	15.5	28.5	11	17.5	28.5	ICC Dkt. #15037	A-2743 2790	Agt. L.E.Kipp Agt, B,I.Jones
Mar. 28, 1938	13	14	27	13	14	27	5% Increase (Ex.Parte 123)	A-2743 2790 3100	Agt. L.E.Kipp Agt. B.I.Jones Agt. B.I.Jones	16	14	30	14	16	30	12	18	30	5% Increase (ExParte #123)	A-2743 2790 3100	Agt. L.E.Kipp Agt. B.I.Jones Agt. B.I.Jones
June 10, 1938	13	16	29	13	16	29	Adjustment	A-2743 2790	Agt. L.E.Kipp Agt. B.I.Jones	16	12	28	14	14	28	12	16	28	Adjustment	A-2743 2790	Agt. L.E.Kipp Agt. B.I.Jones
Dec. 5, 1938 to Present (Dec. 15, 1939)	13	15.5	28.5	13	15.5	28.5	ICC Docket 15037 as amended	A-2942 3300	Agt. L.E.Kipp Agt. B.I.Jones	16	12.5	28.5	14	14.5	28.5	12	16.5	28.5	ICC Dkt. #15037 as amended	A-2942 3300	Agt. L.E.Kipp Agt. B.I.Jones

To: New York, New York.

Date	From Minneapolis, Minn. — Basing Points — Chicago, Ill. — TO	From Dom	From Exp	Thru Dom	Thru Exp	Peoria, Ill. — TO	From Dom	From Exp	Thru Dom	Thru Exp	Basis	Tariff Authority — ICC NO.	Issued By	From Kansas City, Mo. — Basing Points — Chicago, Ill. — TO	From Dom	From Exp	Thru Dom	Thru Exp	Peoria, Ill. — TO	From Dom	From Exp	Thru Dom	Thru Exp	St.Louis, Mo. — TO	From Dom	From Exp	Thru Dom	Thru Exp	Basis	Tariff Authority — ICC.NO.	Issued By
March 15, 1910	10	16	13	26	23	10	16	13	26	23		10043 2503 1936	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	16	13	28	25	10.5	17.5	14.5	28	25	9	19	16	28	25	-	C-6918 2503 1936 D-33	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
Dec. 1, 1914	10	16	13	26	23	10	17	14	27	24	Adjustment (Eastern Factor)	B-2774 A-3239 2340	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	16	13	28	25	10.5	18.5	15.5	29	26	9	19	16	28	25	Adjustment (Eastern Factor)	C-9650 A-3239 2340 D-66	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
Dec. 12, 1914	10	16	13	26	23	10	16	13	26	23	Adjustment (Eastern Factor)	B-2774 A-3239 2340	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	16	13	28	25	10.5	17.5	14.5	28	25	9	19	16	28	25	Adjustment (Eastern Factor)	C-9650 A-3239 2340 D-66	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
Jan. 20, 1915	10	16.8	13.7	26.8	23.7	10	16.8	13.7	26.8	23.7	5% Increase (I&S Docket #333) (Eastern Factor)	B-2774 A-3239 2340	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	16.8	13.7	28.8	25.7	10.5	18.3	15.2	28.8	25.7	9	19.8	16.7	28.8	25.7	5% Increase(I&S Dkt. #333) (Eastern Factor)	C-9650 A-3239 2340 D-66	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
March 25, 1918	10	19.5	18	29.5	28	10	16.8	13.7	26.8	23.7	15% Increase (ExParte 57) (Eastern Factor)	B-2774 A 3239 2340	CM&ST.P.RY. LS&MS RY.. LE&W RR.	12	19.5	18	31.5	30	10.5	18.3	15.2	28.8	25.7	9	19.8	16.7	28.8	25.7	15% Increase (ex (ExParte 57) (Eastern Factor)	C-9650 A-3239 2340 D-93	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
March 31, 1918	10	19.5	18	29.5	28	10	16.8	13.7	26.8	23.7	-	B-2774 A-3239 2340	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	19.5	18	31.5	30	10.5	18.3	15.2	28.8	25.7	9	22.5	21	31.5	30	15% Increase (ExParte 57) (Eastern Factor)	C-9650 A-3237 2340 D-93	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
April 12, 1918	10	19.5	18	29.5	28	10	19.5	18	29.5	28	15% Increase (ExParte 57) (Eastern Factor)	B-2774 A-3239 2821	CM&ST.P. RY. LS&MS RY. LE&W RR.	12	19.5	18	31.5	30	10.5	21	19.5	31.5	30	9	22.5	21	31.5	30	15% Increase (ExParte 57) (Eastern Factor)	C-9650 A-3239 2821 D-93	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
May 20, 1918	10	19.5	18	29.5	28	10	19.5	18	29.5	28	-	B-2774 A-3239 2821	CM&STLP. RY. LS&MS RY. LE&W RR.	12	19.5	18	31.5	30	10.5	21	19.5	31.5	30	9	23	21	32	30	Restoration Port Relationship (Eastern Factor)	C-9650 A-3239 2821 D-111	CRI&P RY. LS&MS RY. LE&W RR. Agt. Wm.Cameron
June 25, 1918	12.5	24.5	23	37	35.5	12.5	25	23	37.5	35.5	25% Increase (G.O. # 28)	B-2774 LS-499 2821	CM&ST.P. RY. NYC RR. LE&W RR.	15	24.5	23	39.5	38	13	26	24.5	39	37.5	11.5	28	26.5	39.5	38	25% Increase (G.O.#28)	C-10041 LS-499 2821 D-111	CRI&P RY. NYC RR. LE&W RR. Agt. Wm.Cameron

																														D-111	Agt. Wm.Cameron
June 25, 1918	12.5	24.5	23	37	35.5	12.5	25	23	37.5	35.5	25% Increase (G.O. # 28)	B-2774 LS-499 2821	CM&ST.P. RY. NYC RR. LE&W RR.	15	24.5	23	39.5	38	13	26	24.5	39	37.5	11.5	28	26.5	39.5	38	25% Increase (G.O.#28)	C-10041 LS-499 2821 D-111	CRI&P RY. NYC RR. LE&W RR. Agt. Wm.Cameron
Dec. 31, 1919	12.5	24.5	23	37	35.5	12.5	24.5	23	37	35.5	-	B-2774 839	CM&ST.P. RY. Agt.W.J.Kelly	15	24.5	23	39.5	38	13	26.5	25	39.5	38	11.5	28	26.5	39.5	38	Adjustment Account Agency Publication (Eastern Factor	C-10590 839	CRI&P RY. Agt. W.J.KELLY
Feb. 28, 1920	11	24.5	23	35.5	34	11	24.5	23	35.5	34	Adjustment	B-4165 839	CM&ST.P. RY. Agt. W.J.Kelly	15	24.5	23	39.5	38	13	26.5	25	39.5	38	11.5	28	26.5	39.5	38	-	C-10590 839	CRI&P RY. Agt. W.J.Kelly
Aug. 26, 1920	15	34.5	33	49.5	48	15	34	31.5	49	46.5	35% Increase (Ex Parte 74) (Western Factor) 40% Increase (Ex Parte 74) (Eastern Factor)	B-4165 839	CM&ST.P. RY. Agt. W.J.Kelly	20.5	34.5	33	55	53.5	17.5	37	34.5	54.5	52	15.5	39	37	54.5	52.5	35% Increase (Ex Parte 74) (Western Factor) 40% Increase (Ex Parte 74) (Eastern Factor)	C-10590 839	CRI&P RY. Agt. W.J.Kelly
Nov. 10, 1920	15	34.5	33	49.5	48	15	34.5	33	49.5	48	-	B-4165 839	CM&ST.P. RY. Agt. W.J.Kelly	20.5	34.5	33	55	53.5	17.5	37	35.5	54.5	53	15.5	39.5	38	55	53.5	Restoration port relationship (Eastern Factor)	C-10590 839	CRI&P. RY. Agt. W.J.Kelly
Nov. 22, 1920	15	34.5	33	49.5	48	15	34.5	33	49.5	48	-	B-4273 839	CM&ST.P. RY. Agt. W.J.Kelly	20.5	34.5	33	56	53.5	18.5	37	35.5	55.5	54	15.5	39.5	38	55	53.5	Adjustment (Western Factor)	C-10758 839	CRI&P RR. Agt. W.J.Kelly
Sept. 28, 1921	16	30	24.5	45	39.5	15	30	24.5	45	39.5	Adjustment (Eastern Factor)	B-4273 1126	CM&ST.P. RY. Agt. W.J.Kelly	20.5	30	24.5	50.5	45	18.5	32.5	26.5	51	45	15.5	35	26.5	50.5	42	Adjustment (Eastern Factor)	C-10758 1126	CRI&P RR. Agt. W.J.Kelly
Jan. 1, 1922	13.5	30	24.5	43.5	38	13.5	30	24.5	43.5	38	10% Reduction	B-4273 1126	CM&ST.P. RY. Agt. W.J. Kelly	17.5	30	24.5	47.5	42	16.5	32	26.5	48.5	43	13.5	34	26.5	47.5	40	10% Reduction	C-10758 1126	CRI&P RR. Agt. W.J.Kelly
May 1, 1922	13.5	30	24.5	43.5	38	13.5	30	24.5	43.5	38	-	B-4273 1126	CM&ST.P. RY. Agt. W.J.Kelly	17.5	30	24.5	47.5	42	15.5	32	26.5	47.5	42	13.5	34	26.5	47.5	40	ICC Dkt. #12929 of Nov. 21, 1921, as amended. (Western Factor)	C-10990 1126	CRI&P RR. AGT. W.J.Kelly

To: New York, New York

Date	From Minneapolis, Minn.											From Kansas City, Mo.										
	Basing Points									Basis	Tariff Authorities	Basing Points										Basis	Tariff Authorities
	Chicago, Ill.					Peoria, Ill.						Chicago, Ill.					Peoria, Ill.						
	TO	From		Thru		TO	From		Thru		ICC No. / Issued By	TO	From		Thru		TO	From		Thru			ICC No. / Issued By
		Dom	Exp	Dom	Exp		Dom	Exp	Dom	Exp			Dom	Exp	Dom	Exp		Dom	Exp	Dom	Exp		
June 1, 1922	13	30	24.5	43	37.5	13	30	24.5	43	37.5	Adjustment (Western Factor)	17.5	30	24.5	47.5	42	15.5	32	26.5	47.5	42	-	C-10990 / CRI&P RY. Agt. W.J.Kelly
July 1, 1922	13	30	22.5	43	35.5	13	30	22.5	43	35.5	Adjustment (Eastern Factor	B-4612 1126 / CM&ST.P RY. Agt. W.J.Kelly	17.5	30	22.5	47.5	40	15.5	32	24.5	47.5	40	13.5	34	26.5	47.5	40	Adjustment (Eastern Factor)	C-10990 1126 / CRI&P RY. Agt. W.J.Kelly
April 1, 1923	13	30	22.5	43	35.5	13	30	22.5	43	35.5	-	B-4862 1373 / CM&ST.P Ry. Agt. B.I.Jones	17.5	30	22.5	47.5	40	15.5	32	24.5	47.5	40	13.5	34	26.5	47.5	40	-	C-10990 1373 / CRI&P RY. Agt. B.I.Jones
July 1, 1934	13	24.5	22.5	37.5	35.5	13	24.5	22.5	37.5	35.5	Adjustment (Eastern Factor)	B-6283 2515 / CM&ST.P.RY. Agt. B.I.Jones	17.5	24.5	22.5	42	40	15.5	26.5	24.5	42	40	13.5	28.5	26.5	42	40	Adjustment (Eastern Factor)	C-12185 2515 / CRI&P RY. Agt. B.I.Jones
July 1, 1935	12	24.5	22.5	36.5	34.5	12	24.5	22.5	36.5	34.5	ICC Dkt. 17000 Part 7	A-2590 2515 / Agt. L.E.Kipp Agt. B.I.Jones	15	24.5	22.5	39.5	37.5	13	26.5	24.5	39.5	37.5	11	28.5	26.5	39.5	37.5	ICCDkt.-17000 Part 7	A-2590 2515 / AGT. L.E.Kipp Agt. B.I.Jones
March 28, 1938	13	26	24	39	37	13	26	24	39	37	5% Increase (Ex Parte 123)	A-2743 3055 3100 / Agt. L.E.Kipp Agt. B.I.Jones Agt. B.I.Jones	16	26	24	42	40	14	28	26	42	40	12	30	28	42	40	5% Increase (Ex Parte 123)	A-2743 3055 3100 / Agt. L.E.Kipp Agt. B.I.JONES Agt. B.I.Jones
June 10, 1938	13	26	23.5	39	36.5	13	26	23.5	39	36.5	Restoration of former port relationship (Eastern Factor)	A-2743 3055 / Agt. L.E.Kipp Agt. B.I.Jones	16	26	23.5	42	39.5	14	28	25.5	42	39.5	12	30	27.5	42	39.5	Restoration of former port relationship (Eastern Factor)	A-2743 3055 / Agt. L.E.Kipp Agt. B.I.Jones
Oct. 28, 1938 and Present (Dec. 15, 1939)	13	26	17.5	39	30.5	13	26	17.5	39	30.5	Voluntary reduction (Eastern Factor)	A-2942 3356 / Agt. L.E.Kipp Agt. B.I.Jones	16	26	17.5	42	33.5	14	28	19.5	42	33.5	12	30	21.5	42	33.5	Voluntary reduction (Eastern Factor)	A-2942 3356 / Agt. L.E.Kipp Agt. B.I.Jones

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I. & S. Docket 4718
Exhibit No. 8
Witness

Statement of rates on GRAIN from representative origins in Western Territory to representative destinations in Central Freight Association and the East showing the equalization of the through rates in the various gateways.

(Rates shown in cents per 100 Pounds)

PART 1. FROM ORIGINS IN NORTHWESTERN TERRITORY.

From Andover S. D. to Toledo, Ohio

Rate Andover to Minneapolis	Rate Minneapolis to Chicago	Rate Ex Northwest Chicago, Ill. to Toledo, O.	Thru Rate Andover to Toledo via Chicago	Rate Andover to Peoria, Ill.	Rate Ex Northwest Peoria to Toledo, O.	Thru Rate Andover to Toledo via Peoria
18.5	13	15.5	47	31.5	15.5	47

From Duane, North Dakota to Toledo, Ohio.

Rate Duane to Minneapolis	Rate Minneapolis to Chicago	Rate Ex Northwest Chicago to Toledo	Thru Rate Duane to Toledo via Chicago	Rate Duane to Peoria	Rate Ex Northwest Peoria to Toledo, O.	Thru Rate Duane to Toledo via Peoria
21	13	15.5	49.5	34	15	49.5

From Andover, S.D., to New York,N.Y.

Rate Andover to Minneapolis	Rate Minneapolis to Chicago	Rate, Reshipping Chicago, Ill. to New York	Thru Rate Andover to New York via Chicago	Rate Andover to Peoria, Ill.	Rate Ex Northwest Peoria, Ill. to New York	Thru Rate Andover to New York via Peoria
18.5	13	26 (Domestic) 23.5 (Export A) 17.5 (Export B)	57.5 55 49	31.5	26 23.5 17.5	57.5 55.5 49

From Duane N. D. to New York

Rate Duane to Minneapolis	Rate Minneapolis to Chicago	Rate, Reshipping Chicago to New York	Thru Rate Duane to New York via Chicago	Rate Duane to Peoria	Rate Ex Northwest Peoria, Ill. to New York	Thru Rate Duane to New York via Peoria
21	13	26 (Domestic) 23.5 (Export A) 17.5 (Export B)	60 57.5 51.5	34	26 (Domestic) 23.5 (Export A) 17.5 (Export B)	60 57.5 51.5

From Harrison, Nebr. to Toledo, Ohio

Rate Harrison, Neb. to Sioux City & Omaha	Rate Sioux City and Omaha to Chicago	Rate Ex T. M. Chicago, Ill. to Toledo, Ohio	Thru Rate Harrison to Toledo via Chicago	Rate Harrison to Peoria	Rate Ex T. M. Peoria to Toledo	Thru Rate Harrison to Toledo via Peoria
27	16	12.5	55.5	41	14.5	55.5

From Concordia, Kan. to Toledo, Ohio

Rate Concordia to Kansas City	Rate Kansas City to Chicago	Rate Ex T. M. Chicago, Ill. to Toledo	Thru Rate Concordia to Toledo via Chicago	Rate Concordia to Peoria	Rate Ex T. M. Peoria, to Toledo	Thru Rate Concordia to Toledo via Peoria	Rate Concordia to St. Louis	Rate Ex T. M. St. Louis to Toledo	Thru Rate Concordia to Toledo via St.L.
16	16	12.5	44.5	30	14.5	44.5	28	16.5	44.5

From Harrison, Nebr. to New York City

Rate Harrison, Neb. to Sioux City & Omaha	Rate Omaha and Sioux City to Chicago	Rate Reshipping Chicago to New York	Thru Rate Harrison to New York via Chicago	Rate Harrison to Peoria	Rate Reshipping Peoria to New York	Thru Rate Harrison to New York via Peoria
27	16	26 (Domestic) 23.5 (Export A) 17.5 (Export B)	69 66.5 60.5	41	28 (Domestic) 25.5 (Export A) 19.5 (Export B)	69 66.5 60.5

From Concordia, Kansas to New York City

Rate Concordia to Kansas City	Rate Kansas City to Chicago	Rate Reshipping Chicago to New York	Thru Rate Concordia to New York via Chicago	Rate Concordia to Peoria	Rate Reshipping Peoria to New York	Thru Rate Concordia to New York via Peoria	Rate Concordia to St.Louis	Rate Reshipping St. Louis to New York	Thru Rate Concordia to New York via St.L.
16	16	26 23.5 17.5	58 55.5 49.5	30	28 (Domestic) 25.5 (Export A) 19.5 (Export B)	58 55.5 49.5	28	30 (Domestic) 27.5 (Export A) 21.5 (Export B)	58 55.5 49.5

Explanation of reference marks.

(A) Applies on Grain other than that shown in reference (B)
(B) Applies only on Barley, Corn, Oats, Rye and Wheat.

Tariff Authorities

Agent B. T. Jones	Tariff 245 G - I.C.C. 3356
Agent B. I. Jones	Tariff 535 A - I.C.C 3300
Agent L. E. Kipp's	Tariff 332 B - I.C.C.A2942
C.B.&Q. RR.	Tariff 1800 N - I.C.C.19146
C.B.&Q. RR.	Tariff 5400 O - I.C.C.19446
C.& E.V. RY.	Tariff 17041B - I.C.C.10751
C.NW.ST.P&F.RR.	Tariff 17000D - I.C.C.B7050

I.C.C. Docket 4718
Exhibit No. 9
Witness

Statement

Showing All Rail Rates on Grain from LaSalle, Morris, Ottawa and Seneca, Illinois, to representative destinations in Central Freight Association Territory, Also to Baltimore, Md., New York, N.Y. and Boston, Mass, Compared with Barge-Rail Rates via Chicago, Illinois.

(Rates in Cents per 100 pounds)

From LaSalle, Illinois / TO		All Rail	Barge - Rail		
		Standard All-Rail Joint Thru Rate	Barge Rate to Chicago	Reshipping Rate beyond	Thru Rate
Baltimore	Md.				
Export		(A) 34	4 1/8	22	26 1/8
		(B) 28	4 1/8	16	20 1/8
Domestic		35	4 1/8	23	29 1/8
New York	N.Y.				
Export		(A) 35½	4 1/8	23½	27 5/8
		(B) 29½	4 1/8	17½	21 5/8
Domestic		38	4 1/8	26	30 1/8
Boston	Mass.				
Export		(A) 35½	4/1/8	23½	27 5/8
		(B) 29½	4 1/8	17½	21 5/8
Domestic		40	4 1/8	28	32 1/8
Buffalo	N.Y.	32	4 1/8	20	24 1/8
Cincinnati	Ohio	20	4 1/8	13½	17 5/8
Cleveland	Ohio	31	4 1/8	19	23 1/8
Columbus	Ohio	31	4 1/8	19	23 1/8
Detroit	Mich.	27	4 1/8	15	19 1/8
Fort Wayne	Ind.	26	4 1/8	14	18 1/8
Indianapolis	Ind.	19	4 1/8	12	16 1/8
Pittsburgh	Pa.	32	4 1/8	20	24 1/8
Port Huron	Mich.	27	4 1/8	15	19 1/8
Toledo	Ohio	27	4 1/8	15	19 1/8
Wheeling	W. Va.	32	4 1/8	20	24 1/8

(Rates in Cents per 100 pounds)

From: Morris and Seneca, Illinois / TO		All Rail	Barge - Rail		
		Standard All-Rail Joint Thru Rate	Barge Rate to Chicago	Reshipping Rate beyond	Thru Rate
Baltimore	Md.				
Export		(A) 31½	4 1/8	22	26 1/8
		(B) 25½	4 1/8	16	20 1/8
Domestic		32½	4 1/8	23	27 1/8
New York	N.Y.				
Export		(A) 33	4 1/8	23½	27 5/8
		(B) 27	4 1/8	17½	21 5/8
Domestic		35½	4 1/8	26	30 1/8
Boston	Mass.				
Export		(A) 33	4 1/8	23½	27 5/8
		(B) 27	4 1/8	17½	21 5/8
Domestic		37½	4 1/8	28	32 1/8
Buffalo	N. Y.	29½	4 1/8	20	24 1/8
Cincinnati	Ohio	23	4 1/8	13½	17 5/8
Cleveland,	Ohio	28½	4 1/8	19	23 1/8
Columbus	Ohio	28½	4 1/8	19	23 1/8
Detroit	Mich.	24½	4 1/8	15	19 1/8
Fort Wayne	Ind.	23½	4 1/8	14	18 1/8
Indianapolis	Ind.	21½	4 1/8	12	16 1/8
Pittsburgh	Pa.	29½	4 1/8	20	24 1/8
Port Huron	Mich.	24½	4 1/8	15	19 1/8
Toledo	Ohio	24½	4 1/8	15	19 1/8
Wheeling	W. Va.	29½	4 1/8	20	24 1/8

Explanation of reference marks.

(A) Applicable on grain other than that shown in reference Circle(B) below.

(B) Applicable only on Barley, Corn, Oats, Rye and Wheat.

Tariff Authorities

Agent	B. T. Jones	Tariff	245 G	I.C.C.	335
"	" " "	"	535 A	"	3300
"	" " "	"	100	"	3335
"	L. E. Kipp's	"	68 N	"	A 2852
	N.Y.C. R.R.	"	643-B	"	LS 1939
	I.C. R.R.	"	1537-K	"	A 11148
	I.C. R.R.	"	1809-O	"	A 11100
	C.B.&Q. R.R.	"	1346 R	"	19265
	C.B.&Q. R.R.	"	6786 L	"	19318
	C.R.I.&P. Ry.	"	34560 B	"	C 12847

I. & S. Docket 4718
Exhibit No. 10
Witness [illegible]

Statement
Showing Local, Ex-Northwest, Ex-Trans-Mississippi and Reshipping rates on Grain, C/L., from Chicago, Peoria, Illinois and St. Louis, Mo., to representative Central Freight Association destinations.

To \ From Chicago, Ill.		Trans-Mississippi River (See Notes 20 and 50)	North-West (See Note 40)	Reshipping (See Note 45)	Local
		Grain (See Note 5)	Grain (See Note 5)	Grain (See Note 5)	Grain (See Note 5)
		Carload Rates in Cents per 100 Pounds			
Buffalo	N. Y.	18.5	21.5	20	28.5
Cadillac	Mich.	17	17	19	20.5
Cheboygan	"	20	20	23	25.0
Cincinnati	Ohio	12.5	15.5	13.5	20.5
Cleveland	"	15.5	18.5	19	20.0
Columbus	"	13.5	16.5	19	20.0
Dayton	"	12.5	15.5	14	20.0
Detroit	Mich.	12.5	15.5	15	17.0
Ft. Wayne	Ind.	11.5	14.5	14	17.0
Grand Rapids	Mich.	13	13	15	17.0
Indianapolis	Ind.	11.5	14.5	12	17.0
Kalamazoo	Mich.	11.5	14.5	15	17.0
Lafayette	Ind.	10.5	13.5	12	15.0
Lansing	Mich.	14	14	15	17.0
Lima	Ohio	12.5	15.5	14	17.0
Muncie	Ind.	11.5	14.5	13	17.0
Pittsburgh	Pa.	18.5	21.5	20	28.5
Port Huron	Mich.	16	16	15	17.0
Seymour	Ind.	14	15.5	13	20.0
Terre Haute	Ind.	13	14.5	12	15.0
Toledo	Ohio	12.5	15.5	15	17.0
Wheeling	W.Va.	18.5	21.5	20	28.5
Zanesville	Ohio	16.5	19.5	19	25.0

EXPLANATION OF NOTES

Note 5

LIST OF COMMODITIES TAKING GRAIN RATES, ALSO MINIMUM CARLOAD WEIGHTS

Where reference is made to this Note, rates apply on the following commodities in carloads.

Commodity	Minimum Carload Weights in Pounds
Barley Buckwheat Corn	In straight or mixed carloads, minimum weight marked capacity of car (subject to Notes A, B, C, D, E, F, I, J, K and L, page 76) except as provided by " (25) " shown below
Corn, pop, on the ear, or when in bags, barrels, baskets (with solid woodon tops, securely fastened), boxes or in bulk, shelled	Minimum weight 40,000 pounds.
Feterita Feterita Screenings Kaffir Corn	In straight or mixed carloads, minimum weight marked capacity of car (subject to Notes A, B, C, D, E, F, I, J, K and L, page 75), except as provided by " (25) " shown below.
Malt Malt Skimmings	40,000
Milo Maize Oats Rye Screenings, grain (other than ground) Screenings, soya bean (other than ground) Soy Beans (Soja or Soya) Spelts Wheat	In straight or mixed carloads, minimum weight marked capacity of car (subject to Notes A, B, C, D, E, F, I, J, K and L, page 75), except as provided by " (25) " shown below.

(25) ON OATS, EAR CORN, SNAPPED CORN, CORN IN THE SHUCK, UNTHRESHED FETERITA, UNTHRESHED KAFFIR CORN OR UNTHRESHED MILO MAIZE, straight or mixed carloads, minimum weight 80 per cent of marked capacity of car (subject to Notes A, B, C, D, E, F, I, J, K and L, page 75).

List No. 1 - Same as Note 5

From Peoria, Illinois / TO		Trans-Mississippi River (See Note 20)	North-West (See Note 40)	Reshipping (See note 45)	Local
		Grain. (See Note 5)	Grain (See Note 5)	Grain (See Note 5)	Grain (See List No.1)
		Carload Rates in Cents per 100 Pounds			
Buffalo	N. Y.	20.5	21.5	22	32
Cadillac	Mich.	20	-	22	25
Cheboygan	Mich.	23	-	25	33
Cincinnati	Ohio	14.5	15.5	14	18
Cleveland	Ohio	17.5	18.5	20	22
Columbus	Ohio	15.5	16.5	20	22.5
Dayton	Ohio	14.5	15.5	14	20
Detroit	Mich.	14.5	15.5	16	22
Ft. Wayne	Ind.	13.5	14.5	14	20
Grand Rapids	Mich.	15	-	16	22
Indianapolis	Ind.	13.5	14.5	12	17
Kalamazoo	Mich.	13.5	-	16	22
Lafayette	Ind.	12.5	13.5	12	15
Lansing	Mich.	16	-	16	22
Lima	Ohio	14.5	15.5	14	20
Muncie	Ind.	13.5	14.5	14	18
Pittsburgh	Pa.	20.5	21.5	22	32
Port Huron	Mich.	18	-	17	22
Seymour	Ind.	14	15.5	14	18
Terre Haute	Ind.	13	14.5	12	15
Toledo	Ohio	14.5	15.5	16	22
Wheeling	W. Va.	20.5	21.5	22	32
Zanesville	Ohio	18.5	19.5	20	26

From St. Louis Mo. / To		See Note 25 and Reference Mark (110)	See Note 25 and Reference Mark (111)	
		Grain (See Note 5)	Grain (See Note 5)	Local
		Carload Rates in Cents per 100 Pounds.		
Buffalo	N.Y.	24	22.5	32
Cadillac	Mich.	25.5	23	30
Cheboygan	Mich.	30	26	36
Cincinnati	Ohio	(116) (118) 20 (116) (119) 15.5	(116) (118) 20 (116) (119) 16.5	20
Cleveland	Ohio	18	19.5	24
Columbus	Ohio	18	17.5	22
Dayton	Ohio	17	16.5	22
Detroit	Mich.	16	16.5	22
Ft. Wayne	Ind.	16	15.5	20
Grand Rapids	Mich.	16	18	22
Indianapolis	Ind.	13	15.5	17
Kalamazoo	Mich.	16	15.5	22
Lafayette	Ind.	14	14.5	17
Lansing	Mich.	16	18	22
Lima	Ohio	16	16.5	22
Muncie	Ind.	16	15.5	19
Pittsburgh	Pa.	24	22.5	32
Port Huron	Mich.	19	20	24
Seymour	Ind.	14	15	17
Terre Haute	Ind.	12	13	15
Toledo	Ohio	16	16.5	22
Wheeling	W.Va.	24	24.5	32
Zanesville	Ohio	20	20.5	26

EXPLANATION OF NOTES

NOTE A. -- Actual weight will apply in the following cases:

(a) When grain is loaded at point of origin to within 24 inches of roof, at side walls of car, for the purpose of Federal, State or Official Grain Exchange inspection.

(b) When grain is loaded to proper grain line of cars so marked.

(c) When car is loaded to full space capacity.

When any of the provisions of this Note are applicable, notation to that effect should be inserted in the bill of lading by shipper or agent of the carrier, but failure to make such notation shall not prevent the application of the terms of this Note upon presentation of suitable proof. Such notation should be specific, and indicate on which of the three grounds herein specified actual weights should be protected.

INSTRUCTIONS TO AGENTS:

THE SPECIAL ATTENTION OF AGENTS AT SHIPPING POINTS IS DIRECTED TO THE IMPORTANCE OF MAKING PROPER NOTATION ON BILLS OF LADING AND WAY-BILLS.

NOTE B. -- When grain in transit is transferred from one car to another (either direct or through elevators), the minimum carload weight applicable to the shipment prior to transfer will also apply after transfer.

This rule applies only in cases of car to car transfers, either direct or through elevator, and is not applicable at rate breaking points unless the tariffs of carriers into and out of such rate breaking points both contain this rule.

NOTE C. -- (a) Except as noted in paragraph (b) of this Note:

When carrier cannot furnish car of capacity ordered by shipper and for its own convenience furnishes a car of greater capacity than the one ordered, such car may be used on the basis of the minimum carload weight applicable to the car ordered by shipper, but in no case less than actual weight; the capacity of car ordered, number and the date of the order must be shown in each instance upon the bill of lading and carrier's way-bill.

(b) When shipper orders for bulk grain loading a car of marked capacity less than 60,000 pounds and carrier furnishes and shipper uses a car of greater capacity than ordered, the minimum carload weight on grain as per NOTE 5, page 71 (except on oats, ear corn, pop corn, snapped corn, corn in the shuck, unthreshed feterita, unthreshed kaffir corn or unthreshed milo maize), will be 60,000 pounds, but not greater than the marked capacity of car furnished; and the minimum weight on oats, ear corn, snapped corn, corn in the shuck, unthreshed feterita, unthreshed kaffir corn, or unthreshed milo maize, will be 48,000 pounds but not greater than 80 per cent of the marked capacity of car furnished.

NOTE D. -- OVERLOADED CARS. -- When cars are overloaded by shippers, carriers may transfer the lading, for which transfer a charge of 1 cent per bushel will be assessed, in addition to any switching charges which may be necessary in accomplishing the transfer.

In applying this Note, a car is to be considered overloaded only when the actual net weight of the shipment (including weight of grain doors and cooperage material), exceeds the load limit stenciled on the car. (C.F.A. Inf. 18765).

NOTE E. -- In no case willthe minimum weight be less than 40,000 pounds, except as provided in Note F. (This Note takes precedence over Notes A, B, C and D).

NOTE F. -- CLEAN-OUT RULE.- During each calendar year for the purpose of cleaning out elevators and grain houses, one carload of Soya Beans or of each kind of Grain or Seeds or of a mixture of the different kinds of Grain may be shipped subject to a minimum weight of 30,000 pounds per car used from each elevator or grain house served directly by the rails of the carriers. Shipments as provided in this note are subject to the provisions of Note L, below. (C.F.A. Inf. 25818).

NOTE I. -- MIXED CARLOADS OF GRAIN. -- When commodities not subject to " (25) " (Note 5, Page 71), are shipped in mixed carloads with commodities subject to " (25) " (Note 5, page 71), the minimum weights provided for commodities not subject to " (25) " (Note 5, page 71), will apply to the entire carload.

NOTE J. -- MIXED CARLOADS OF GRAIN, GRAIN PRODUCTS AND BY-PRODUCTS OF GRAIN. -- When commodities covered by lists of Grain Products and By-Products of Grain (Notes 10 and 15, pages 72 to 74) are shipped in mixed carloads with commodities covered by list of Grains (Note 5, page 71), the minimum carload weights on Grain Products and By-Products of Grain (Notes 10 and 15, pages 72 to 74), will apply to the entire carload, provided the total weight of commodities covered by list of Grains (Note 5, page 71), does not exceed 50 per cent of the total weight loaded in the car.

IF THE WEIGHT OF COMMODITIES COVERED BY LIST OF GRAINS (Note 5, page 71), exceeds 50 per cent of the total weight loaded in the car, the minimum weights provided for articles covered by list of Grains (Note 5, page 71), will apply to the entire carload; except that if the grain loaded consists wholly of articles covered by " (25) " (Note 5, page 71), the minimum weights provided for articles covered by " (25) " (Note 5, page 71,) will apply to the entire carload.

NOTE K. -- MIXED CARLOADS OF FLOUR, GRAIN PRODUCTS AND BY-PRODUCTS OF GRAIN. -- On mixed carloads of Flour, Grain Products and/or By-Products of Grain listed in Notes 10, 12 and 15, pages 72 to 74, originating in territories described in Notes 20, 25, 27, 34, 36, 40 and 50, pages 76 to 83, and 87, the flour rates named will be applied on the actual weight of the Flour; the rate on the Grain Products will be applied on the actual weight of the Grain Products, and the rate on the By-Products of Grain will be applied on the actual weight of the By-Products of Grain, and if the actual weight of the Flour, Grain Products and/or By-Products of Grain is less than the governing minimum carload weight, the deficiency in weight shall be charged for on basis of the highest rated article in the mixed carload.

NOTE L. -- When mixed shipments of Grain (see Note 5, page 71), Grain Products (see Note 10, pages 72 and 73), or Grain By-Products (see Note 15, page 74) are offered for shipment all or all but one of the several articles must be in sacks or packages, or separated one from another by bulkheads or partitions in the following manner, AND AT THE OWNER'S RISK OF MIXING, viz.:

(a) The bulkheads or partitions may consist of one or more of the articles in sacks or packages, piled in such a manner as to form a substantial barrier between the several articles in the mixture.

(b) The bulkheads or partitions may consist of wood, but the installation (including cost of wooden material) and removal of such bulkheads or partitions must be done by and at the expense of the owner or shipper.

EXPLANATION OF REFERENCE MARKS

(110) Applies ONLY on traffic originating in the States of Illinois, Indiana, Iowa (points shown in Note D below), Louisiana, Mississippi, Missouri (points shown in Note E below) and that portion of the States of Kentucky and Tennessee lying west of the Tennessee River.

(111) Will NOT apply on traffic originating in the States of Illinois, Indiana, Iowa (points shown in Note D below), Louisiana, Mississippi, Missouri (points shown in Note E below) and that portion of the States of Kentucky and Tennessee lying west of the Tennessee River.

NOTE D. -- IOWA -- Stations as follows:

Becks	Davenport	Kookuk	Pleasant	West Keithsburg
Bellevue	Dubuque	LeClaire	Valley	Wever
Bettendorf	Elk River Jct.	Linwood	Princeton	
Brioker	Fairport	Lyons	Sabula	
Buffalo	Folletts	Montpelier	Sandusky	
Bullard	Ft. Madison	Montrose	Shaffton	
Burlington	Galland	Mooar	Shopton	
Camanche	Gordon's Ferry	Muscatine	Spring Grove	
Cascade (Des	Green Island	Patterson	Tile Works	
Moines Co.)	Hurst's Mill Spur	Pleasant	Viele	
Clinton	Kemper	Creek	West Burlington	

NOTE E. -- MISSOURI -- Stations as follows:

Alexandria	Gregory	La Grange	Munger's Switch	West Quincy
Ashburn	Hannibal	Lamb	Reading	White Rock
Busch	Helton	La Motte	Riverland	
Canton	Huiskamp	Louisiana	St. Louis	
Fenway	Ilasco Jct.	Mark	Saverton	

(116) Applies only from Alton, Ill. (see Note B, below), Carondelet, Mo., East St. Louis, Ill, Hannibal, Mo., and St. Louis, Mo. (see Note C, below) on Grain originating beyond which is reconsigned at East St. Louis or Alton, Ill., or St. Louis, Mo., or which moves on through consignment; also applies via B&ORR (W), from Ashland and Beardstown, Ill., on shipments originating in Trans-Mississippi River Territory, as described in Note 20, on pages 76 and 77.

This rate does not include elevation, switching or other terminal charges at Alton, Ill., or St. Louis, Mo.

To secure advantage of this proportional rate, shippers must surrender expense bills representative of the Grain as follows: Corn expense bills for corn; wheat expense bills for wheat; oats expense bills for oats; except that shipments consisting of unlike grains will be billed as a mixture, and tonnage in kind surrendered in proportion to its ingredients. Expense bills will not be honored for application under the foregoing rule, after twelve (12) months from the date thereof. Expense bills, when used to secure advantage of this rate, shall be taken up and cancelled by the Agent or Commercial Agent. Rates will also apply on through shipments, originating at points on connecting lines, from which no through rates are published, when received direct from connecting lines, consigned through.

Explanation of Reference Marks - Continued

NOTE. -- Where a shipment is reconsigned on tracks at St. Louis, Mo., or East St. Louis, Ill., and the inbound carrier shows in their transfer billing to Eastern Lines, point of shipment, such shipment will be accorded the reshipping rate, without the surrender of expense bills; however, should transfer billing not show point of origin, then the local rate is to be applied.

(118) Applies via ICRR only.

(119) Will not apply via ICRR.

Tariff Authorities

Agent	B.	T.	Jones,	Tariff	100,	ICC No.	3335
"	"	"	"	"	535-A,	" "	3200
"	"	"	"	"	401-H,	" "	2976
NYC RR	Tariff	643-B, ICC L S No. 1939					
NYC RR	"	1370-D (CCC & St.L.) ICC No. 8855.					

I.& S. Docket 4718.
EXHIBIT NO. 11
WITNESS -

Showing

Showing short line distances, present local rates on Grain, carload, present published 1st and 6th Class rates and percentage ratio local Grain rate of 1st Class, from Chicago, Ill. to C.F.A., Trunk Line and New England Territories, also Grain rates carload (Docket 17000-7) Col's.7 and 10 in W.T.L. and S.W.L. territories for distances shown in Column 2 and percentage ratio same are of 1st class rates shown under Column 5.

(Rates in cents per one hundred pounds)

Column 1	2	3	4	5	6	7	8	9	10	11	12
To	Short Line Distances (Docket 15879 formula 164 ICC 314	Present Local Rate on Grain	Present Sixth Class Rate	Published Present First Class Rate	Percentage Present Rate on Grain is of First Class Rate (Column 5)	WTL Scale On Grain,C.L. (Note 1) increased under Ex Parte 123	First Class Scale (docket 15879 Formula) increased under Ex Parte 123	Percentage WTL Scale (Column 7) is of First Class Scale (Column 8)	SWL Scale On Grain,C.L. (Note 1) increased under Ex Parte 123	First Class Scale (docket 15879 Formula) increased under Ex Parte 123	Percentage SWL Scale (Column 10) is of First Class Scale (Column 11)
Baltimore, Md.	767		42	154		38	157	24.2	41	157	26.1
Export (		(A) 30.5			19.8						
(		(B) 24.5			15.9						
Domestic		31.5			20.5						
New York City, N.Y.	890		46	167		41	171	24.0	46	171	26.9
Export (		(A) 32.0			19.2						
(		(B) 26.0			15.6						
Domestic		34.5			20.7						
Boston, Mass.	973		46	169		45	179	25.1	49	179	27.4
Export (		(A) 32.0			18.9						
(		(B) 26.0			15.4						
Domestic		36.5			21.6						
Battle Creek, Mich.	156	17.0	20	74	23.0	16	74	21.6	17	74	23.0
Buffalo, N.Y.	498	28.5	33	121	23.6	28	122	23.0	31	122	25.4
Cincinnati, Ohio	283	20.5	26	96	21.4	21	96	21.9	23	96	24.0
Cleveland, Ohio	332	20.0	28	101	19.8	23	101	22.8	25	101	24.8
Columbus, Ohio	295	20.0	26	96	20.8	22	96	22.9	24	96	25.0
Detroit, Mich.	267	17.0	25	92	18.5	20	92	21.7	22	92	23.9
Fort Wayne, Ind.	148	17.0	20	73	23.3	15	73	20.5	16	73	21.9
Indianapolis, Ind.	181	17.0	22	79	21.5	17	79	21.5	18	79	22.8
Kalamazoo, Mich.	137	17.0	19	70	24.3	15	70	21.4	16	70	22.9
Pittsburgh, Pa.	454	28.5	32	117	24.4	27	117	23.1	30	117	25.6
Port Huron, Mich.	315	17.0	27	98	17.3	22	98	22.4	24	98	24.5
Toledo, Ohio	231	17.0	24	87	19.5	19	87	21.8	21	87	24.1
Wheeling, W.Va.	417	28.5	31	111	25.7	25	111	22.5	28	111	25.2

Tariff Authorities

Agent B.T. Jones' 245-G, ICC 3356.
Agent B.T. Jones' 483, ICC 2447.
Agent B.T. Jones' 490-A, ICC 2767.
Agent B.T. Jones' 535-A, ICC 3300.

Explanation of Note And Reference Marks

Note 1 - Docket 17000, Part 7 (173 ICC 511).
(A) - Applicable on grain other than that shown in reference Note B.
(B) - Applicable only on Barley, Corn, Oats, Rye and Wheat.

I.& S. Docket 4718
EXHIBIT No. 12
WITNESS J. ...

STATEMENT SHOWING ORIGIN POINTS OF 792 CARS OF CORN MOVING TO CHICAGO AT TRUCK AND BARGE COMPETITIVE RATES DURING THE PERIOD: MAY 1ST TO NOVEMBER 30TH, 1939, ACCORDED MILLING IN TRANSIT PRIVILEGES AND VARIOUS CORN PRODUCTS REFORWARDED TO DESTINATIONS EAST OF CHICAGO BY RAIL.

ORIGIN POINT		ROAD	LOCAL STATE RATE	NORMAL RATE	NUMBER OF CARS
Agnew,	Ill.	C&NW	12½¢	13¢	1
Altrar,	"	NYC	8¢	12¢	1
Arbov,	"	IC	10½¢	12¢	1
Ancona,	"	AT&SFe	8¢	12¢	4
Andres,	"	CMStP&P	6¢	8½¢	33
Arlington,	"	CB&Q	9½¢	12¢	2
Ashkum,	Ill.	IC	8½¢	11¢	3
Ashton,	"	C&NW	10½¢	11½¢	3
Baker,	"	CB&Q	8¢	10½¢	7
Ballou,	"	Wabash	6¢	9½¢	1
Beecher,	"	C&EI	6¢	8½¢	7
Belshar,	Ind.	NYC	6¢	8½¢	1
Big Rock,	Ill.	CB&Q	8¢	9½¢	2
Blackstone,	"	Alton	6½¢	10¢	2
Blair,	"	NYC	6¢	10¢	1
Brayson,	"	C&NW	8½¢	11¢	1
Bristol,	Ill.	CB&Q	7½¢	9½¢	4
Brock,	"	CMStP&P	6¢	8½¢	6
Buckingham,	"	IC	7¢	10½¢	2
Bude,	"	C&NW	11¢	12¢	1
Burgess Junction,	"	CB&Q	7½¢	9½¢	11
Burnett,	"	CB&Q	11½¢	12¢	2
Cabery,	"	IC	8¢	11½¢	5
Cayuga,	"	Alton	8¢	10½¢	3
Champlin,	"	Wabash	10½¢	12¢	1
Chana,	"	CB&Q	10½¢	11¢	3
Charlotte,	Ill.	IC	10¢	12¢	6
Chase,	"	CMStP&P	8½¢	9½¢	1
Chatsworth,	"	IC	6½¢	9¢	1
Cherry,	"	CMStP&P	9½¢	12¢	4
Clare,	"	CGT	9¢	9½¢	1
Clifton,	"	IC	7½¢	9½¢	5
Creston,	"	C&NW	9½¢	10½¢	8
Crete,	"	C&EI	5½¢	8½¢	1
Cullom,	"	IC	9¢	12¢	17
Dana,	"	AT&SFe	9½¢	12¢	6
Danforth,	Ill.	IC	9½¢	12¢	1
DeKalb,	"	C&NW	9¢	9½¢	1
Dimmick,	"	IC	8½¢	11¢	1
Earlville,	"	C&NW	8½¢	10½¢	4
Earlville,	"	CB&Q	8½¢	10½¢	3
Elburn,	"	IC	10½¢	12¢	4
Elbridge Siding,	"	NYC	6¢	8½¢	1
Elwood,	"	Alton	8½¢	8½¢	9
Esmond,	"	CGT	9½¢	10½¢	1

ORIGIN POINT		ROAD	LOCAL STATE RATE	NORMAL RATE	NUMBER OF CARS
Essex,	Ill.	Wabash	6¢	10¢	2
Evans,	"	Alton	8½¢	12¢	7
Exline,	"	NYC	6¢	8⅓¢	1
Eylar,	"	IC	9¢	12¢	1
Flag Center,	"	CB&Q	10¢	10½¢	7
Flag Center,	"	CMStP&P	10¢	10½¢	1
Flagg,	"	C&NW	10¢	10½¢	3
Flanagan,	"	IC	11½¢	11¢	13
Frankfort,	"	MC	5¢	8½¢	1
Franklin Grove,	"	C&NW	10½¢	12¢	1
Garfield,	Ill.	Alton	8¢	12¢	6
Goodenow,	"	C&EI	6¢	8⅓¢	4
Grand Ridge,	"	CB&Q	6½¢	10	9
Grant Park,	"	C&EI	6¢	8½¢	8
Graymont,	"	IC	11¢	10¢	12
Green Oak,	"	CB&Q	10¢	12¢	2
Hahneman,	"	C&NW	10½¢	12¢	3
Henkel,	"	IC	9½¢	11¢	1
Hinckley,	"	CB&Q	8½¢	9½¢	6
Indian Oaks,	"	IC	6¢	8½¢	8
Irene,	Ill.	IC	10¢	10½¢	1
Joliet,	"	Alton	5¢	8⅓¢	6
Joliet,	"	CRI&P	5¢	8⅓¢	2
Kankakee,	"	IC	6¢	8⅓¢	6
Kankakee,	"	NYC	6¢	8⅓¢	10
Kasbeer,	"	CB&Q	10½¢	12¢	3
Kempton,	"	IC	6½¢	12¢	4
Kernan,	"	ATSFe	7¢	10¢	5
Leidy,	"	CB&Q	9½¢	12¢	6
LeMoille,	"	CB&Q	10¢	12¢	2
Lemley,	Ill.	C&NW	10½¢	12¢	3
LaRose,	"	Alton	8½¢	12¢	4
LaSalle,	"	CRI&P	9¢	12¢	2
Lee,	"	CB&Q	9¢	10½¢	4
Leeds,	"	AT&SFe	8½¢	12¢	4
Leland,	"	CB&Q	8½¢	10¢	6
Leonore,	"	CB&Q	8¢	12¢	2
Ledemia,	"	Wabash	10½¢	12¢	1
Long Point,	"	ATSFe	8½¢	12¢	5
Lostant,	Ill.	NYC	8½¢	12¢	3
Lostant,	"	IC	8½¢	12¢	8
Low Point,	"	Alton	10½¢	12¢	2
McDowell,	"	Wabash	10½¢	12¢	6
McNabb,	"	NYC	9¢	12¢	1
Malden,	"	CB&Q	9½¢	12¢	2
Malta,	"	C&NW	9¢	10¢	3
Manhattan,	"	CMStP&P	6¢	8½¢	5
Manhattan,	"	Wabash	6¢	8½¢	2
Manlius,	"	C&NW	10½¢	12¢	16
Manteno,	"	IC	6¢	8½¢	16
Martinton,	"	C&EI	7½¢	12¢	6
Marseta,	"	CB&Q	9¢	11¢	10

ORIGIN POINT		ROAD	LOCAL STATE RATE	NORMAL RATE	NUMBER OF CARS
Meriden,	Ill.	CB&Q	8½¢	11¢	8
Millbrook,	"	CB&Q	6½¢	9½¢	1
Millington,	"	CB&Q	7¢	9½¢	7
Missal,	"	NYC	7¢	10¢	3
Morence,	"	C&EI	6¢	8½¢	3
Monee,	"	IC	5½¢	8	11
Monroe Center,	"	CMStP&P	10¢	10½¢	3
Moor,	"	AT&SFe	7½¢	12¢	1
Naperville,	Ill.	CB&Q	6¢	8½¢	2
Neponset,	"	CB&Q	11½¢	12¢	2
Normandy,	"	C&NW	10½¢	12¢	13
North Aurora,	"	C&NW	6¢	8½¢	1
No.Hayden,	Ind.	NYC	6¢	8½¢	6
No.Hooper,	Ill.	CMStP&P	8¢	10¢	2
Ocove,	"	Alton	10¢	12¢	2
Odell,	"	Alton	7¢	10½¢	15
Ohio,	"	CB&Q	10½¢	12¢	2
Oregon,	Ill.	CB&Q	11¢	12¢	2
Oswego,	"	CB&Q	6¢	8½¢	3
Papineau,	"	C&EI	7¢	10½¢	1
Pam Pam,	"	CB&Q	6½¢	10½¢	3
Peotone,	"	IC	6¢	8½¢	13
Peterstown,	"	CMStP&P	9¢	11¢	3
Pittwood,	"	C&EI	8½¢	12¢	4
Plano,	"	CB&Q	6¢	9½¢	9
Polk,	"	CMStP&P	6¢	8½¢	1
Pontiac,	"	Wabash	9½¢	12¢	2
Princeton,	Ill.	CB&Q	10¢	12¢	8
Puddick,	"	NYC	6¢	10¢	2
Richards,	"	CB&Q	7¢	10¢	3
Rochelle,	"	CB&Q	10¢	10½¢	2
Rollo,	"	C&NW	8½¢	10¢	5
Romeo,	"	AT&SFe	5¢	8½¢	3
Rutland,	"	IC	8½¢	12¢	5
St.Anne,	"	C&EI	6½¢	10¢	1
Sandwich,	"	CB&Q	8¢	9½¢	4
Scarboro,	"	CMStP&P	9½¢	10½¢	4
Schneider,	Ind.	NYC	6¢	8½¢	3
Seatonville,	Ill.	C&NW	9½¢	12¢	6
Serena,	"	CB&Q	7½¢	9½¢	16
Shabbona,	"	CB&Q	8½¢	10¢	9
Shaws,	"	CB&Q	10¢	12¢	2
Sheffield,	"	CRI&P	11¢	12¢	24
Sheridan,	"	CB&Q	7½¢	9½¢	5
Sollitt,	"	C&EI	6¢	8½¢	2
Sonoma,	"	CB&Q	8¢	9½¢	3
Spencer,	"	WC	5¢	8½¢	2
Standard,	"	CMStP&P	9¢	12¢	2
Sterling,	"	CB&Q	11½¢	13¢	3
Steward,	"	CB&Q	9½¢	10½¢	2
Steward Junction,	"	CMStP&P	9½¢	10½¢	4

ORIGIN POINT		ROAD	REDUCED RATE	NORMAL RATE	NUMBER OF CARS
Streator,	Ill.	AT&SFe	7¢	12¢	1
Sublette,	"	IC	10¢	12¢	1
Sugar Grove,	"	CB&Q	7½¢	8½¢	16
Swygert,	"	IC	9½¢	12¢	4
Symerton,	"	Wabash	6¢	9½¢	2
Tallmadge,	"	CMStP&P	6½¢	10¢	3
Tinley Park,	"	CRI&P	5¢	7½¢	1
Toluca,	"	AT&SFe	8½¢	12¢	3
Tonica,	"	IC	8½¢	12¢	3
Triumph,	Ill.	C&NW	6½¢	11¢	2
Troxel,	"	CMStP&P	8½¢	9½¢	1
Troy Grove,	"	C&NW	8½¢	11¢	3
Union Hill,	"	NYC	6¢	10¢	1
Van Orin,	"	CB&Q	10¢	12¢	3
Van Petten,	"	C&NW	10½¢	12¢	4
Varna,	"	Alton	8½¢	12¢	4
Virgil,	"	CGW	8½¢	9½¢	1
Walnut,	"	CB&Q	10½¢	12¢	2
Washburn,	Ill.	Alton	9½¢	12¢	5
Waterman,	"	CB&Q	8½¢	10¢	3
Wedron,	"	CB&Q	7¢	10¢	7
Welland,	"	CMStP&P	9¢	11¢	1
Wendell,	"	CB&Q	9½¢	11½¢	7
Wenona,	"	Alton	8½¢	12¢	2
West Brooklyn,	"	CB&Q	9½¢	11¢	1
Whitaker,	Ill.	CMStP&P	6¢	8½¢	10
Wilman,	"	CB&Q	8¢	12¢	1
Wilton,	"	CMStP&P	6¢	8½¢	13
Wyanet,	"	CRI&P	10½¢	12¢	1
Yeager,	"	CMStP&P	0¢	8½¢	2
Yorkville,	"	CB&Q	6½¢	9½¢	3
Zearing,	"	CB&Q	9½¢	12¢	3

I.& S. Docket 4718
Exhibit No. 13
Witness Sperry

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GRAIN PROPORTIONALS EX-BARGE TO
OFFICIAL TERRITORY

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RATES IN CENTS PER 100 POUNDS TO CHICAGO, ILL. ON CORN

FROM STATIONS IN ILLINOIS AND INDIANA

WHICH APPLY WITHOUT TRANSIT PRIVILEGE;

ALSO, INTERSTATE RATES AND SPECIFICS TO CHICAGO ON GRAIN

AND DISTANCES IN MILES TO CHICAGO

FROM THE SAME STATIONS

TO Chicago, Ill. FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN INTERSTATE	GRAIN # SPECIFIC
Willow Springs	18	5	7½	8½
Lemont	25	5	7½	8½
Lockport	33	5	8	8½
Joliet	37	5	8½	8½
Plaines	42	5½	8½	8½
Millsdale	46	5½	8½	8½
Blodgett	50	5½	9	9½
Lorenzo	53	5½	9½	9½
Pequot	57	5½	9½	9½
Coal City	58	5½	9½	9½
Elwood	46	5½	8½	8½
Prairie Creek	50	5½	9½	9½
Wilmington	53	5½	9½	9½
Braidwood	57	5½	9½	9½
Braceville	61	5½	9½	9½
Mazonia	63	5½	10	10
Gardner	65	5½	10	10
Twight	74	6	10	10
Nevada	80	6	10	10
McGowan Crossing	84	6	10	10
Blackstone	88	6½	10	10
Smithdale	92	7	10	10
Streator	96	7	12	12
Munster	100	7½	12	12
Garfield	104	8	12	12
Wenona	109	8½	12	12
Evans	112	8½	12	12
Custer	115	8½	12	12
Varna	118	8½	12	12
La Rose	122	8½	12	12
Washburn	128	9½	12	12
Low Point	131	10½	12	12
Cazenovia	133	11½	12	12
Odell	82	7	10½	10½
Cayuga	87	8	10½	10½
Pontiac	92	9½	12	12
Reformatory	93	10	12	12
Ocoya	98	10	12	12

Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TARIFF AUTHORITY.

Alton R.R.....Ill. C.C. No. 122, I.C.C. No. 208 (Rates)
Ill. C.C. No. 53, I.C.C. No. 89 (Mileages)

A.T.&.S.F. RY.

To Chicago, Ill. From (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN # SPECIFIC
Willow Springs....	18	5	8	8½
Santa Fe Park.....	19	5	8	8½
Palisades.....	21	5	8½	8½
Lemont.....	26	5	8½	8½
Romeo.....	30	5	8½	8½
Lockport.....	33	5	8½	8½
Joliet.....	38	5	8½	8½
Millsdale.....	47	5½	8½	8½
Drummond.....	49	5½	9½	9½
Blodgett.....	51	5½	9½	9½
Lorenzo.....	53	5½	9½	9½
Pequot.....	58	5½	9½	9½
Coal City.....	59	5½	9½	9½
Gorman.....	62	5½	10	10
Mazon.....	67	5½	10	10
Verona.....	71	6	10	10
Kinsman.....	75	6	10	10
Ransom.....	80	6½	10	10
Kernan.....	85	7	10	10
Benckendorf Spur..	87	7	10	10
Streator.....	90	7	12	12
Moon.....	94	7½	12	12
Ancona.....	96	8	12	12
Leeds.....	103	8½	12	12
Toluca.....	110	8½	12	12
La Rose.....	116	8½	12	12
Long Point.....	99	8½	12	12
Dana.....	103	9½	12	12

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TARIFF AUTHORITY

A.T.&.S.F. Ry....Ill. C.C. No. 608, I.C.C. No. 13039 (Rates)
Ill. C.C. No. 571, I.C.C. No. 12714 (Mileages)

C.&.E.I. RY.

TO Chicago, Ill. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTRASTATE	LOCAL INTERSTATE	# SPECIFIC
Steger	29	5½	8½	8½
Crete	30	5½	8½	8½
Lincoln Fields	33	6	8½	8½
Goodenow	34	6	8½	8½
Beecher	38	6	8½	8½
Sollitt	41	6	8½	8½
Grant Park	45	6	8½	8½
Momence	50	6	8½	8½
Laws Switch	53	6½	10	8½
Koster	56	6½	10	8½
Wichert	58	6½	10	8½
St. Anne	60	6½	10	8½
Papineau	64	7	10½	9½
Martinton	68	7½	12	9½
Pittwood	72	8½	12	9½
Tallmadge	55	6½	10	8½
Hopkins Park	59	6½	10	8½

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TARIFF AUTHORITY

C.&.E.I. Ry...Ill. C.C. No. 352, I.C.C. No. 487 (Rates)
Ill. C.C. No. 124, I.C.C. No. 153 (Mileages)

C.&.N.W. RY.

To Chicago, Ill. From (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTRASTATE	LOCAL INTERSTATE	#SPECIFIC
Elmhurst	16	6	7½	8½
Villa Park	18	6	7½	8½
Lombard	20	6	7½	8½
Glen Ellyn	23	6	7½	8½
Wheaton	25	6	7½	8½
Winfield	28	6	8	8½
West Chicago	30	6	8	8½
Geneva	36	6	8½	8½
La Fox	41	7	8½	8½
Elburn	44	8	8½	8½
Maple Park	51	8½	9½	9½
Cortland	56	9	9½	9½
De Kalb	59	9	9½	9½
Malta	65	9	10	10
Creston	70	9½	10½	10½
Rochelle	75	10	10½	10½
Flagg	79	10	10½	10½
Ashton	83	10½	11½	11½
Franklin Grove	88	10½	12	12
Nachusa	93	10½	12	12
Dixon	98	10½	12	12
Nelson	104	11	12	12
Sterling	109	11½	13	13
Galt	113	12	13	13
Agnew	114	12½	13	13
Herbert	73	10	10½	10½
Sycamore	60	9	9½	9½
Elva	64	8½	10	10
McGirr	67	8½	10	10
Shabbona Grove	74	8½	10	10
Rollo	78	8½	10	10
Earlville	85	8½	10½	10½
Triumph	92	8½	11	11
Troy Grove	96	8½	11	11
Brayson	101	8½	11	11
Churchill	103	9½	12	12
Ladd	106	9½	12	12
Seatonville	109	9½	12	12

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TO Chicago, Ill. FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN " SPECIFIC
La Salle Jct.....	104	9½	12	12
Dalzell.....	106	9½	12	12
Shaft No. 2.....	108	9½	12	12
Spring Valley.....	109	9½	12	12
Van Petten.....	111	10½	12	12
Hahnaman.....	116	10½	12	12
Normandy.....	121	10½	12	12
Manlius.....	128	10½	12	12
Langley.....	134	10½	12	12
Buda.....	138	11	12	12
Morse.....	145	11½	12	12
St. Charles.....	38	6	8½	8½
Batavia.....	36	6	8½	8½
North Aurora.....	42	6	8½	8½
Aurora.....	45	6	8½	8½

/...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TARIFF AUTHORITY

C.& N.W. Ry. (Ill.C.C. No.764, I.C.C. 10584 (Rates)
(Ill.C.C. No.832, I.C.C. 10816 (Rates)
(Ill.C.C. No.590, I.C.C. 9986 (Mileages)

To Chicago, Ill. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTRASTATE	LOCAL INTERSTATE	# SPECIFIC
La Grange.....	14	6	8	8
Western Springs....	15	6	8	8
Hinsdale.....	17	6	8	8
Clarendon Hills....	18	6	8	8
Westmont.....	19	6	8	8
Fairview Avenue....	20	6	8	8
Downers Grove.....	21	6	8	8
Belmont.....	23	6	8	8
Lisle.....	25	6	8	8
Naperville.....	29	6	8	8
Eola.....	34	6	8	8
Aurora.....	37	6	8	8
Montgomery.....	40	6	8	8
Bristol.....	46	7½	9	9
Plano.....	52	8	9	9
Sandwich.....	56	8	9	9
Somonauk.....	59	8	9	9
Leland.....	66	8½	10	10
Earlville.....	72	8½	10½	10½
Meriden.....	78	8½	11	11
Mendota.....	83	9	11	11
Clarion.....	88	9	11	11
Arlington.....	92	9½	12	12
Bearing.....	96	9½	12	12
Malden.....	99	9½	12	12
Princeton.....	104	10	12	12
Wyanet.....	111	10½	12	12
Buda.....	117	11	12	12
Neponset.....	123	11½	12	12
North Aurora.....	41	6	8	8
Batavia.....	44	6	8	8
West Chicago.....	50	6	8	8
Baker.....	72	8	10	10
Oswego.....	44	6	8	8
Yorkville.....	50	6	9	9
Fox.....	53	6	9	9

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TO Chicago, Ill. FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN # SPECIFIC
Millbrook.....	56	6½	9½	9½
Millington.....	60	7	9½	9½
Sheridan.....	65	7½	9½	9½
Burgess Jct.....	67	7½	9½	9½
Serena.....	69	7½	9½	9½
Blakes.....	71	7½	10	10
Wedron.....	73	7	10	10
Dayton.....	77	6½	10	10
Ottawa.....	81	5½	10	10
South Ottawa.....	82	5½	10	10
Grand Ridge.....	90	6½	10	10
Richards.....	94	7	10	10
Streator.....	98	7	12	12
Kangley.....	101	7½	12	12
Wilsman.....	105	8	12	12
Leonore.....	107	8	12	12
Lowell.....	112	8½	12	12
Ticona.....	112	8½	12	12
La Salle.....	113	9	12	12
Peru.....	112	9	12	12
Spring Valley.....	108	9½	12	12
Hegeler.....	104	9½	12	12
Ladd.....	102	9½	12	12
Green Oak.....	101	10	12	12
Kasbeer.....	104	10½	12	12
Walnut.....	109	10½	12	12
Deer Grove.....	115	10½	12	12
Tampico.....	120	11½	13	13
Tampico (HY&T).....	120	9	10½	10½
Prophetstown.....	128	12½	13	13
Sugar Grove.....	45	7½	8½	8½
Big Rock.....	50	8	9½	9½
Hinckley.....	55	8½	9½	9½
Waterman.....	62	8½	10	10
Shabbona.....	67	8½	10	10
Lee.....	72	9	10½	10½
Steward.....	77	9½	10½	10½
Rochelle.....	83	10	10½	10½
Flag Center.....	86	10	10½	10½

...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B.T.Jones' Tariff I.C.C. No. 3356.

(HY&T)...On shipments originating on the Hoopole, Yorktown & Tampico R. R.

C.B.&.Q. R.R. - 3

TO Chicago, Ill. FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN SPECIFIC
Chana	92	10½	11	11
Honey Creek	96	11	12	12
Oregon	98	11	12	12
Stratford	107	12½	13	13
Nifa	43	6	8½	8½
Mooseheart	45	6	8½	8½
Mount Morris	105	11½	12	12
Radley	76	8½	10½	10½
Paw Paw	75	8½	11	11
Compton	81	9	11	11
West Brooklyn	84	9½	12	12
Shaws	89	10	12	12
Amboy	94	10½	12	12
Amboy (LCCE)	94	8	9½	9½
Walton	100	10½	12	12
Harmon	106	10½	12	12
Stones	110	11	12	12
Rock Falls	114	11½	13	13
Sterling	115	11½	13	13
Agnew	120	12½	13	13
Wendell	88	9½	11½	11½
La Moille	92	10	12	12
Van Orin	96	10	12	12
Ohio	102	10½	12	12
Burnett	120	11½	12	12
Lombardville	124	11½	12	12

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

(LCCE)...On shipments originating on the Lee County Central Electric Ry.

TARIFF AUTHORITY

C.B.& Q. R.R....Ill.C.C. No. 1956, I.C.C. No. 19265 (Rates)
Ill.C.C. No. 1505, I.C.C. No. 17392 (Mileages)

C. G. W. R.R.

TO Chicago Ill FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN # SPECIFIC
Elmhurst	17	6	7½	8½
Villa Park	18	6	7½	8½
Lombard	21	6	7½	8½
No. Glen Ellyn	23	6	7½	8½
Gretna	26	6	8	8½
Ingalton	31	6	8	8½
St. Charles	36	6	8½	8½
Wasco	41	7	8½	8½
Lily Lake	46	8	8½	8½
Virgil	49	8½	9½	9½
Richardson	51	8½	9½	9½
Lovell's Crossing	53	9	9½	9½
Sycamore	57	9	9½	9½
De Kalb	62	9	9½	9½
Five Points	59	9	9½	9½
Wilkinson	62	9	9½	9½
Clare	64	9	9½	9½
Esmond	70	9½	10½	10½
Lindenwood	75	10	10½	10½

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TARIFF AUTHORITY

C.G. W.R.R...Ill. C.C. No. 277, I.C.C. No. 5488 (Rates)
Ill. C.C. No. 177, I.C.C. No. 5255 (Mileages)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD

TO Chicago, Illinois FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN # SPECIFIC
Wilkinson	75	9	9½	9½
Bradt	72	9	9½	9½
De Kalb	82	9	9½	9½
Chase	88	8½	9½	9½
Troxel	93	8½	9½	9½
Duffin	98	8	9½	9½
Aurora	106	6	8½	8½
Bakers	103	6	8½	8½
Manhattan	100	6	8½	8½
Wilton	96	6	8½	8½
Andres	94	6	8½	8½
Peotone	88	6	8½	8½
Whitaker	82	6	8½	8½
Yeager	78	6	8½	8½
Momence	75	6	8	8½
Fairdale	72	10	10½	10½
Monroe Center	75	10	10½	10½
Flag Center	91	10	10½	10½
Rochelle	94	10	10½	10½
Steward Junction	100	9½	10½	10½
Scarboro	105	9½	10	10½
Roxbury	111	9	11	11
Welland	116	9	11½	11½
Mendota	122	9	11½	11½
Peterstown	126	9	11	11½
Fitchmore	129	9	12	12
Ladd	135	9½	12	12
Cherry	138	9½	12	12
Seatonville	138	9½	12	12
Home	141	9½	12	12
De Pue	142	9½	12	12
Moronts	144	9	12	12
Granville	148	9	12	12
Standard	151	9	12	12
Cedar Point	154	9	12	12
Oglesby	159	9	12	12

#...Proposition to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD -2

TO Chicago, Ill. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTRASTATE	LOCAL INTERSTATE	# SPECIFIC
Faithorn	55	6	8⅓	8⅓
Judy	61	6	8⅓	8⅓
Polk	63	6	8⅓	8⅓
Brock	65	6	8⅓	8⅓
Puder	67	6	8⅓	8⅓
Delmar	72	6	8⅓	8⅓
Ahern	74	6⅓	10	8⅓
Tallmadge	76	6⅔	10	8⅓
Pembroke	82	7	10	8⅓
North Hooper	88	8	10	8⅓
Hooper	88	8	10	8⅓
Nelson	93	9	10	8⅓

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TARIFF AUTHORITY

C.M.,St.P.& P.R.R...Ill.C.C.Nos.393,569; I.C.C. Nos. B-6248,B-7144 (Rates)
Ill.C.C.No. 367, I.C.C.No. B-6113 (Mileages)

C.R.I.& P. RY.

To Chicago, Ill. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTRASTATE	LOCAL INTERSTATE	# SPECIFIC
Midlothian.....	18	5	6½	8½
Oak Forest.....	20	5	6½	8½
Tinley Park.....	23	5	7½	8½
Mokena.....	29	5	8	8½
New Lenox.....	34	5	8	8½
Joliet.....	40	5	8½	8½
Bird's.....	47	5	8½	8½
Minooka.....	51	5	8½	8½
Morris.....	61	5	9½	9½
Stockdale.....	65	5½	9½	9½
Seneca.....	72	5½	9½	9½
Langham.....	76	5½	9½	9½
Marseilles.....	77	5½	10	10
Brickton.....	83	5½	10	10
Ottawa.....	84	5½	10	10
Utica.....	94	6½	11	11
La Salle.....	99	9	12	12
Peru.....	100	9	12	12
Spring Valley.....	104	9½	12	12
Marquette.....	107	9½	12	12
De Pue.....	110	9½	12	12
Bureau.....	114	10½	12	12
Tiskilwa.....	122	10½	12	12
Wyanet.....	128	10½	12	12
Sheffield.....	136	11	12	12
L.S.& P.C. R.R.				
La Salle.....	99	9	12	12

#...Proportion, to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I. C. C. No. 3356.

TARIFF AUTHORITY

C.R.I.& P.Ry...Ill.C.C.No.732, I.C.C.No. C-12847 (Rates).
Ill.C.C.No.534, I.C.C.No. C-11924 (Mileages)

E. J. & E. RY.

TO Chicago, Ill. FROM (Illinois)	* MILES	CORN LOCAL NON-TRANSIT INTERSTATE	GRAIN LOCAL INTERSTATE (Except non-transit Corn.)	GRAIN # SPECIFIC
Griffith (Ind.).....	19	5½	8	8½
Hartsdale (Ind.).....	21	5½	8	8½
Dyer (Ind.).....	24	5½	8	8½
Chicago Heights.....	30	5½	8	8½
Matteson.....	34	5½	8	8½
Frankfort.....	41	5½	8	8½
Brisbane.....	47	5½	8	8½
East Joliet.....	55	5½	8½	8½
Joliet.....	55	5½	8½	8½
Coynes.....	60	5½	8½	8½
Plainfield.....	65	5½	8½	8½
Walker.....	65	6	8½	8½
Normantown.....	68	6	8½	8½
Frontenac.....	73	6	8½	8½
Wolfs.....	71	6	8½	8½
Caton Farm.....	69	5½	8½	8½
Minooka.....	77	5½	8½	8½

#...Proportion to Chicago of one-factor through rates to Eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

*...To South Chicago.

TARIFF AUTHORITY

E. J. & E. RY.....I.C.C. No. 2243 (Rates)
I.C.C. No. 2199 (Mileages)

ILLINOIS CENTRAL R.R. - 1

TO Chicago, Ill. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTERSTATE	LOCAL INTERSTATE	# SPECIFIC
Flossmoor	25	5½	7½	8½
Matteson	28	5½	8	8½
Richton	29	5½	8	8½
Monee	34	5½	8	8½
Peotone	40	6	8½	8½
Manteno	47	6	8½	8½
Indian Oaks	51	6	8½	8½
Bradley	54	6	8½	8½
Kankakee	56	6	8½	8½
Hospital	57	6	10	8½
Otto	60	6	10	8½
Cheoanse	64	6½	10	9
Clifton	69	7½	10½	9½
Ashkum	73	8½	12	10
Dunforth	77	9½	12	10½
Irwin	65	6½	10	9
Dickeys	68	7	10½	9½
Herscher	71	7	10½	9½
Buckingham	75	7	11	10
Cabery	79	8	12	10½
Kempton	84	8½	12	10½
Cullom	88	9	12	10½
Charlotte	92	10	12	10½
Griswold	90	9	12	10½
Scovel	93	9	12	10½
Eylar	96	9	12	10½
Rugby	98	9½	12	10½
Swygert	100	9½	12	10½
Pontiac	106	9½	12	12
Rook's Creek	110	10	12	12
Graymont	114	10	12	12
Flanagan	118	11	12	12
Hillside	18	6	7½	8½
Elmhurst	20	6	7½	8½
South Addison	22	6	7½	8½

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

TO Chicago, Ill. FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTERSTATE	GRAIN LOCAL INTERSTATE	GRAIN # SPECIFIC
Swift	25	6	7½	8½
Cloverdale	30	6	8	8½
Colvin Park	67	10	10½	10½
Irene	74	10	10½	10½
Dixon	150	10½	12	12
Eldena	156	10½	12	12
Amboy	162	10½	12	12
Sublette	169	10	12	12
Henkel	173	9½	12	12
Mendota	175	9	12	12
Culton	171	8½	12	12
Dimmick	168	8½	12	12
La Salle	159	9	12	12
Oglesby	156	9	12	12
Tonica	150	8½	12	12
Lostant	145	8½	12	12
Wenona	139	8½	12	12
Rutland	134	8½	12	12

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I. C. C. No. 3356.

TARIFF AUTHORITY

I.C. R.R.....Ill.C.C. No. A-1520, I.C.C. No. A-11148 (Rates)
Ill.C.C. No. A-1151, I.C.C. No. A-10441 (Mileages)

NEW YORK CENTRAL R.R. - 1

TO CHICAGO, ILL. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTERSTATE	LOCAL INTERSTATE (Except Non-Transit Corn)	# SPECIFIC
Highlands (Ind)....	27	5	8½	8½
Hays (Ind.).....	28	5	8½	8½
Hartsdale (Ind)....	30	5	8½	8½
St. John (Ind).....	34	6	8½	8½
Cook (Ind).....	39	6	8½	8½
North Hayden (Ind).	45	6	8½	8½
Belshaw (Ind).....	47	6	8½	8½
Schneider (Ind)....	52	6	8½	8½
Illinoi.....	56	6	8½	8½
Edgetown.....	59	6	8½	8½
Delmar.....	61	6	8½	8½
Momence.....	64	6	8½	8½
Eldridge Siding....	67	6	8½	8½
Exline.....	69	6	8½	8½
Kankakee.....	75	6	8½	8½
Bradley.....	77	6	8½	8½
West Kankakee.....	77	6	8½	8½
Greenwich.....	78	6	8½	8½
Van's Siding.....	80	6	10	9½
Lehigh.....	82	6	10	9½
Goodrich.....	85	6	10	9½
Union Hill.....	90	6	10	10
Reddick.....	95	6	10	10
Blair.....	98	6	10	10
Dwight.....	104	6	10	10
Sunbury.....	109	6	10	10
Adams.....	112	6	10	10
Budd.....	114	6	10	10
Missal.....	121	7	10	10
Streator.....	126	7	12	12
Altmar.....	131	8	12	12
Milla.....	136	8	12	12
Lostant.....	139	8½	12	12
Priscilla.....	144	8½	12	12
McNabb.....	148	9	12	12
Granville.....	154	9	12	12
Marcnts.....	158	9	12	12

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I.C.C. No. 3356.

NEW YORK CENTRAL R.R. - 2.

TO Chicago, Ill. FROM (Illinois)	MILES	CORN	GRAIN	
		LOCAL NON-TRANSIT INTERSTATE	LOCAL INTERSTATE (Except non-transit Corn)	# SPECIFIC
De Pue	163	9½	12	12
Howe	162	9½	12	12
Seatonville	165	9½	12	12
Ladd	168	9½	12	12
Churchill	171	9½	12	12
Dyer (Ind.)	32	5	8½	-
Chicago Heights	38	5	8½	-
Matteson	42	5	8½	-
Frankfort	49	5	8½	-
Spencer	54	5	8½	-
Steele	56	5	8½	-
Joliet	61	5	8½	-

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T Jones' Tariff I. C. C. No. 3356.

TARIFF AUTHORITY

N.Y.C. R.R.....I.C.C.-L.S. No. 1939 (Rates)
M.C. R.R.....I.C.C. (M.C.) No. 5002 (Rates)
N.Y.C. R.R.....I.C.C.-L.S. No. 1536 (Mileages)
M.C. R.R.....I.C.C. (M.C.) No. 5196 (Mileages)

To Chicago, Ill. FROM (Illinois)	MILES	CORN LOCAL NON-TRANSIT INTRASTATE	GRAIN LOCAL INTERSTATE	GRAIN # SPECIFIC
Worth	18	5⅓	7⅓	8⅓
Palos Park	20	5⅓	7⅓	8⅓
Orland Park	23	5⅓	7⅓	8⅓
Alpine	27	5⅓	8	8⅓
Marley	30	5⅓	8	8⅓
Steele	34	5⅓	8	8⅓
Brisbane	35	5½	8	8⅓
Manhattan	40	6	8⅓	8⅓
Symerton	47	6	9⅓	9⅓
Ballou	51	6	9⅓	9⅓
Ritchie	53	6	9⅓	9⅓
Custer Park	54	6	9⅓	9⅓
Horse Creek	55	6	9⅓	9⅓
Essex	60	6	10	10
Reddick	66	6	10	10
Cardiff	70	7	10	10
Campus	72	7	10½	10½
Emington	77	8	12	10½
Saunemin	82	9	12	10½
Wing	87	10	12	12
Champlin	101	10½	12	12
Lodemia	103	10½	12	12
McDowell	105	10½	12	12
Pontiac	109	9½	12	12

#...Proportion to Chicago of one-factor through rates to eastern trunk line territory contained in Agent B. T. Jones' Tariff I. C. C. No. 3356.

TARIFF AUTHORITY

Wabash Ry.... Ill. C.C. No. 1047, I. C.C. No. 7130 (Rates)
Ill. C.C. No. 806, I. C.C. No. 5442 (Mileages)

EXHIBIT NO. 15

I. & S. Dkt. 4718

WITNESS Beadle

CORN PRODUCTION

by counties

years 1931 to 1938.
(in bushels)

Year	Will County	Grundy County	Livingston County
1931	5,313,000	4,180,000	11,920,000
1932	5,670,000	4,600,000	13,201,000
1933	2,774,000	2,507,000	6,936,000
1934	1,369,000	1,164,800	4,307,400
1935	6,670,000	4,554,000	12,328,000
1936	3,765,100	3,258,000	8,358,000
1937	7,056,100	5,760,000	15,759,000
1938	6,109,500	4,730,000	12,487,900

FILE COPY
(COMMERCE SECTION)

BOARD OF TRADE OF THE CITY OF CHICAGO

EXHIBIT No. 19

Evidence

I. & S. Docket No. 4718

GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

STATISTICS OF RECEIPTS OF GRAIN

AT CHICAGO, ILL.

AND PRODUCTION OF CORN IN ILLINOIS

FOR A SERIES OF YEARS

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	Corn	Oats	Rye	Barley	Total
Lake	192,000	.....	.....	146,000	.....	338,000
Chicago & North Western Ry.	664,000	2,604,000	956,000	391,000	821,000	5,436,000
Illinois Central R.R.	2,407,000	19,928,000	6,600,000	41,000	323,000	29,299,000
Chicago,Rock Island & Pacific Ry.	831,000	4,096,000	1,798,000	10,000	392,000	7,127,000
Chicago,Burlington & Quincy R.R	2,264,000	8,266,000	4,882,000	46,000	929,000	16,387,000
Chicago & Alton R.R	809,000	5,198,000	2,282,000	14,000	90,000	8,393,000
Chicago & Eastern Illinois Ry	1,133,000	7,967,000	2,962,000	10,000	56,000	12,128,000
Chicago,Milwaukee,St.Paul & Pacific R.R.	334,000	2,276,000	658,000	39,000	470,000	3,777,000
Wabash Ry. (West)	2,169,000	7,880,000	3,352,000	12,000	72,000	13,485,000
Chicago Great Western R.R	230,000	260,000	136,000	3,000	586,000	1,215,000
Atchison,Topeka & Santa Fe Ry	863,000	4,791,000	1,838,000	6,000	168,000	7,666,000
Minneapolis,St.Paul & Sault Ste. Marie Ry	3,000	.....	8,000	1,000	2,000	14,000
Elgin,Joliet & Eastern Ry	30,000	465,000	118,000	3,000	111,000	727,000
Eastern and Southeastern Lines.	1,952,000	7,029,000	2,632,000	120,000	110,000	11,843,000
Trucked in.	17,000	132,000	24,000	.....	.....	173,000
TOTAL RECEIPTS	13,898,000	70,892,000	28,246,000	842,000	4,130,000	118,008,000

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	Corn	Oats	Rye	Barley	Total
Lake.	3,269,000	.....	.....	5,777,000	146,000	9,192,000
Illinois Waterways. . . .	99,000	38,000	.....	.....	.....	137,000
Chicago & North Western Ry	1,361,000	13,856,000	2,223,000	319,000	2,481,000	20,240,000
Illinois Central R.R. . .	1,066,000	14,720,000	3,274,000	69,000	943,000	20,072,000
Chicago,R.I.& Pacific Ry.	574,000	13,103,000	2,725,000	53,000	753,000	17,208,000
Chicago,B.& Q. R.R. . . .	1,646,000	14,841,000	4.951,000	82,000	1,161,000	22,681,000
Chicago & Alton R.R . . .	523,000	4,201,000	1,285,000	27,000	125,000	6,161,000
Chicago & Eastern Ill.Ry.	518,000	4,622,000	821,000	1,000	22,000	5,984,000
Chicago,Milwaukee,St.Paul & Pacific R.R.	744,000	9,424,000	1,254,000	249,000	1,530,000	13,201,000
Wabash Ry	953,000	4,180,000	1,241,000	6,000	58,000	6,438,000
Chicago Great Western Ry.	443,000	2,624,000	518,000	8,000	974,000	4,567,000
Atchison,Topeka & Santa Fe Ry.	365,000	6,020,000	1,744,000	12,000	214,000	8,355,000
Minn.,St.Paul & Sault Ste.Marie Ry	37,000	2,000	8,000	14,000	69,000	130,000
Elgin,Joliet & Eastern Ry.	24,000	386,000	40,000	.....	133,000	583,000
Eastern and Southeastern Lines.	1,783,000	3,453,000	859,000	82,000	139,000	6,316,000
Trucked in.	96,000	1,409,000	220,000	13,000	23,000	1,761,000
TOTAL RECEIPTS . . .	13,501,000	92,879,000	21,163,000	6,712,000	8,771,000	143,026,000

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	Corn	Oats	Rye	Barley	Total
Lake—						
From Duluth	.....	.....	400,000	883,000	582,000	1,865,000
Buffalo	.....	.....	.....	1,215,000	.....	1,215,000
Green Bay	.....	.....	150,000	.....	.....	150,000
Fort William	*1,201,000	.....	991,000	313,000	.....	2,505,000
Port Colbourne	30,000	.....	.....	.....	.....	30,000
Kingston	.....	.....	847,000	5,095,000	.....	5,942,000
Montreal	.....	.....	148,000	612,000	.....	760,000
Total by Lake	1,231,000	.....	2,536,000	8,118,000	582,000	12,467,000
Illinois Waterways	981,000	173,000	.....	.....	.....	1,154,000
Rail—						
Chicago & North Western Ry	1,403,000	8,738,000	1,910,000	188,000	3.372,000	15,611,000
Illinois Central R.R.	3,134,000	10,262,000	2,057,000	43,000	431,000	15,947,000
Chicago,R.I. & Pacific Ry	1,708,000	4,676,000	1,045,000	8,000	610,000	8,047,000
Chicago,B.& Q.R.R	2,448,000	9,829,000	1,515,000	48,000	452,000	14,292,000
Chicago & Alton R.R	1,554,000	2,655,000	1,290,000	14,000	56,000	5,569,000
Chicago & Eastern Ill.Ry.	1,477,000	3,066,000	629,000	27,000	19,000	5,218,000
Chicago, Milwaukee, St. Paul & Pacific R.R	931,000	4,599,000	803,000	151,000	2,341,000	8,825,000
Wabash Ry	3,022,000	2,798,000	626,000	14,000	33,000	6,493,000
Chicago Great Western Ry.	1,006,000	931,000	261,000	4,000	1,823,000	4,025,000
Atchison,Topeka & Santa Fe Ry.	1,950,000	3,170,000	624,000	3,000	60,000	5,807,000
Minn.,St.Paul & Sault Ste. Marie Ry.	150,000	.....	65,000	4,000	140,000	359,000
Elgin,Joliet & Eastern Ry.	9,000	173,000	12,000	.....	13,000	207,000
Eastern & Southeastern Lines	2,645,000	3,289,000	950,000	60,000	560,000	7,504,000
Total by Rail	21,437,000	54,206,000	11,787,000	564,000	9,910,000	97,904,000
Trucked in	131,000	1,121,000	90,000	6,000	11,000	1,359,000
TOTAL RECEIPTS	23,780,000	55,500,000	14,413,000	8,688,000	10,503,000	112,884,000

* Includes 1,013,000 Low Grade.

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	Corn	Oats	Rye	Barley	Total	Soy Beans
Lake—							
From Duluth	286,000	.....	273,000	2,394,000	77,000	3,030,000	.....
Buffalo	566,000	87,000	.....	961,000	.....	1,614,000	.....
Toledo	1,256,000	.....	.....	.....	.....	1,256,000	.....
Ogdensburg	.....	.....	.....	232,000	.....	232,000	.....
Milwaukee	.....	.....	.....	.....	75,000	75,000	.....
Collingwood	.....	760,000	.....	.....	.....	760,000	.....
Goderich	113,000	432,000	.....	.....	.....	545,000	.....
Owen Sound	.....	577,000	.....	.....	.....	577,000	.....
Depot Harbor	.....	797,000	.....	.....	.....	797,000	.....
Midland	.....	169,000	.....	.....	.....	169,000	.....
Kingston	.....	9,000	.....	1,032,000	.....	1,041,000	.....
Port Colburne	.....	279,000	.....	.....	.....	279,000	.....
Montreal	.....	400,000	446,000	391,000	.....	1,237,000	.....
Toronto	.....	113,000	.....	.....	.....	113,000	.....
Fort William	1,690,000	.....	.....	119,000	.....	1,809,000	.....
Total by Lake	3,911,000	3,623,000	719,000	5,129,000	152,000	13,534,000	.....
Illinois Waterways	661,000	723,000	170,000	.....	.....	1,554,000	.....
Rail—							
Chicago & North Western Ry	885,000	4,232,000	2,196,000	49,000	1,953,000	9,315,000	131,000
Illinois Central R.R.	2,080,000	3,919,000	2,985,000	6,000	212,000	9,202,000	2,259,000
Chicago R.I.& Pacific Ry	725,000	2,739,000	1,291,000	4,000	141,000	4,900,000	310,000
Chicago,B.& Q.R.R	1,551,000	3,702,000	2,427,000	2,000	223,000	7,905,000	565,000
Chicago & Alton R.R	884,000	1,142,000	1,042,000	2,000	43,000	3,113,000	414,000
Chi.& Eastern Ill. Ry	1,409,000	2,118,000	1,161,000	20,000	10,000	4,718,000	876,000
Chicago,Milwaukee,St.Paul & Pacific R.R.	1,029,000	2,271,000	797,000	39,000	3,586,000	7,722,000	98,000
Wabash Ry	2,519,000	1,396,000	1,028,000	8,000	20,000	4,971,000	1,021,000
Chi. Gt. Western Ry	280,000	460,000	373,000	2,000	1,064,000	2,179,000	55,000
Atchison,Topeka & Santa Fe Ry.	562,000	1,073,000	639,000	.....	10,000	2,284,000	278,000
Minn.,St.Paul & Sault Ste. Marie Ry.	28,000	7,000	16,000	6,000	403,000	460,000	6,000
Elgin,Joliet & E. Ry.	.....	165,000	73,000	.....	8,000	251,000	17,000
Eastern & Southeastern Lines	4,775,000	4,617,000	2,557,000	116,000	414,000	12,479,000	419,000
Total by Rail	16,727,000	27,841,000	16,590,000	254,000	8,087,000	69,499,000	6,449,000
Trucked in	402,000	783,000	185,000	13,000	1,000	1,384,000	1,000
TOTAL RECEIPTS	21,701,000	32,970,000	17,664,000	5,396,000	8,240,000	85,971,000	6,450,000

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	Corn	Oats	Rye	Barley	Total	Soy Beans
Lake—							
From Buffalo.	54,000	.....	.....	367,000	30,000	451,000	.....
Duluth.	502,000	.....	.....	2,692,000	73,000	3,267,000	.....
Fort William	2,320,000	.....	.....	2,153,000	1,680,000	6,153,000	.....
Montreal	.....	670,000	.....	47,000	.....	717,000	.....
Collingwood.	.....	97,000	.....	.....	.....	97,000	.....
Total by Lake	2,876,000	767,000	.....	5,259,000	1,783,000	10,685,000	.....
Illinois Waterways. . . .	437,000	1,299,000	33,000	.....	19,000	1,788,000	28,000
Rail—							
Chicago & North Western Ry	1,999,000	5,122,000	2,735,000	848,000	4,623,000	15,327,000	305,000
Illinois Central R.R. . .	2,244,000	8,362,000	3,425,000	64,000	351,000	14,446,000	2,507,000
Chicago,R.I.& Pacific Ry	628,000	6,815,000	1,818,000	51,000	368,000	9,680,000	492,000
Chicago,B.& Q.R.R	2,452,000	8,031,000	4,122,000	81,000	348,000	15,034,000	1,143,000
Chicago & Alton R.R . . .	1,549,000	2,784,000	1,019,000	101,000	53,000	5,506,000	662,000
Chi. & Eastern Ill. Ry. .	1,241,000	4,500,000	1,361,000	12,000	5,000	7,119,000	906,000
Chicago,Milwaukee,St.Paul & Pacific R.R.	626,000	3,147,000	1,840,000	482,000	4,581,000	10,676,000	167,000
Wabash Ry	3,314,000	2,733,000	915,000	11,000	117,000	7,090,000	1,040,000
Chi. Gt. Western Ry . . .	287,000	1,400,000	720,000	83,000	1,401,000	3,891,000	76,000
Atchison,Topeka & Santa Fe Ry.	2,191,000	2,024,000	813,000	2,000	40,000	5,070,000	607,000
Minn.,St.Paul & Sault Ste. Marie Ry.	26,000	8,000	30,000	61,000	848,000	973,000	.....
Elgin,Joliet & E. Ry. . .	18,000	821,000	225,000	33,000	47,000	1,144,000	92,000
Eastern & Southeastern Lines.	3,293,000	11,521,000	2,796,000	153,000	1,105,000	18,868,000	775,000
Total by Rail	19,868,000	57,268,000	21,819,000	1,982,000	13,887,000	114,824,000	8,772,000
Trucked in.	301,000	1,169,000	135,000	14,000	2,000	1,621,000	47,000
TOTAL RECEIPTS . . .	23,482,000	60,503,000	21,987,000	7,255,000	15,691,000	128,918,000	8,847,000

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	*Corn	Oats	Rye	Barley	Total	Soy Beans
Lake—							
From Buffalo	199,000	590,000	.....	150,000	.....	939,000	.....
Duluth	764,000	.....	140,000	1,320,000	.....	2,224,000	.....
Albany	.....	57,000	.....	.....	.....	57,000	.....
Philadelphia	.....	120,000	.....	.....	.....	120,000	.....
Fort William	.....	.....	.....	.....	1,203,000	1,203,000	.....
Montreal	.....	4,104,000	.....	.....	28,000	4,132,000	.....
Toronto	.....	1,901,000	.....	.....	.....	1,901,000	.....
Port Colbourne	.....	762,000	.....	.....	.....	762,000	.....
Kingston	.....	2,370,000	.....	.....	.....	2,370,000	.....
Quebec	.....	96,000	.....	.....	.....	96,000	.....
Sarnia	.....	766,000	.....	.....	.....	766,000	.....
Prescott	.....	792,000	.....	.....	.....	792,000	.....
Three Rivers	.....	7,162,000	.....	.....	.....	7,162,000	.....
Total by Lake	963,000	18,720,000	140,000	1,470,000	1,231,000	22,524,000	.....
Illinois Waterways	2,113,000	2,019,000	366,000	.....	.....	4,498,000	97,000
Rail—							
Chicago & North Western Ry	2,715,000	3,753,000	3,600,000	1,247,000	2,750,000	14,065,000	299,000
Illinois Central R.R.	4,423,000	7,408,000	3,636,000	239,000	242,000	15,948,000	1,773,000
Chicago,R.I. & Pacific Ry	2,391,000	4,018,000	2,690,000	275,000	344,000	9,718,000	508,000
Chicago,B.& Q. R.R.	5,190,000	6,335,000	3,920,000	419,000	217,000	16,081,000	1,319,000
Chicago & Alton R.R	2,561,000	2,675,000	1,451,000	125,000	44,000	6,856,000	518,000
Chi. & Eastern Ill. Ry.	1,804,000	3,805,000	1,230,000	29,000	4,000	6,872,000	848,000
Chicago,Milwaukee,St.Paul & Pacific R.R.	1,059,000	2,069,000	1,914,000	1,009,000	3,729,000	9,780,000	130,000
Wabash Ry	6,302,000	3,011,000	1,680,000	57,000	16,000	11,066,000	979,000
Chi. Gt. Western Ry	651,000	772,000	608,000	77,000	1,075,000	3,183,000	29,000
Atchison,Topeka & Santa Fe Ry.	2,930,000	2,332,000	1,068,000	25,000	50,000	6,405,000	475,000
Minn.,St.Paul & Sault Ste. Marie Ry.	58,000	7,000	178,000	86,000	713,000	1,042,000	.....
Elgin,Joliet & E. Ry.	36,000	475,000	26,000	7,000	58,000	602,000	77,000
Eastern & Southeastern Lines	4,657,000	9,151,000	1,903,000	209,000	345,000	16,265,000	1,054,000
Total by Rail	34,777,000	45,811,000	23,904,000	3,804,000	9,587,000	117,883,000	8,009,000
Trucked in	253,000	177,000	35,000	11,000	1,000	477,000	12,000
TOTAL RECEIPTS	38,106,000	66,727,000	24,445,000	5,285,000	10,819,000	145,382,000	8,118,000

* Includes 14,883,000 bu Argentine, 3,298,000 bu South African, 198,000 bu Jugo-Slavian, 64,000 bu Hungarian; total 18,443,000 bu.

RECEIPTS OF GRAIN AT CHICAGO
In Bushels

By	Wheat	Corn	Oats	Rye	Barley	Total	Soy Beans
Lake—							
From Duluth	699,000	60,000	.....	1,702,000	115,000	2,576,000	.....
Illinois Waterways	727,000	10,236,000	465,000	39,000	.....	11,467,000	355,000
Rail—							
Chicago & North Western Ry	1,192,000	13,525,000	3,581,000	386,000	3,889,000	22,573,000	352,000
Illinois Central R.R.	4,433,000	26,120,000	3,387,000	113,000	502,000	34,555,000	2,616,000
Chicago,R.I. & Pacific Ry	1,729,000	14,400,000	3,129,000	168,000	456,000	19,882,000	368,000
Chicago,B.& Q. R.R.	4,139,000	15,795,000	4,056,000	258,000	381,000	24,629,000	1,093,000
Chicago & Alton R.R	2,611,000	7,078,000	1,332,000	24,000	47,000	11,092,000	861,000
Chi. & Eastern Ill. Ry.	1,477,000	7,796,000	1,243,000	25,000	6,000	10,547,000	1,355,000
Chicago,Milwaukee,St.Paul & Pacific R.R.	2,128,000	7,950,000	2,075,000	257,000	3,071,000	15,481,000	142,000
Wabash Ry	4,457,000	8,452,000	1,081,000	40,000	64,000	14,094,000	1,398,000
Chi. Gt. Western Ry	780,000	2,457,000	1,236,000	16,000	905,000	5,394,000	24,000
Atchison,Topeka & Santa Fe Ry.	2,140,000	3,857,000	699,000	6,000	80,000	6,782,000	412,000
Minn.,St.Paul & Sault Ste. Marie Ry.	89,000	8,000	6,000	118,000	507,000	728,000	1,000
Elgin,Joliet & E. Ry.	35,000	666,000	106,000	13,000	88,000	908,000	144,000
Eastern & Southeastern Lines	2,952,000	14,774,000	2,083,000	123,000	688,000	20,620,000	1,967,000
Total by Rail	28,162,000	122,878,000	24,014,000	1,547,000	10,684,000	187,285,000	10,633,000
Trucked in	481,000	2,627,000	65,000	19,000	1,000	3,193,000	181,000
TOTAL RECEIPTS	30,069,000	135,801,000	24,544,000	3,307,000	10,800,000	204,521,000	11,169,000

CORN IN BUSHELS (Final 000 Omitted)

YEAR	RECEIPTS AT CHICAGO BY					② PRODUCTION IN ILLINOIS
	Rail	Lake	Truck	Barge	Total	
1931						353,128
1932	70,760	.....	132	.....	70,892	402,179
1933	91,432	.....	1,409	38	92,879	224,748
1934	54,206	.....	1,121	173	55,500	146,760
1935	27,841	3,623	783	723	32,970	316,510
1936	57,268	767	1,169	1,299	60,503	217,751
1937	45,811	18,720	177	2,019	66,727	449,616
1938	122,878	60	2,627	10,236	135,801	379,350
① 1939	54,950	.....	3,486	10,190	68,626	

① To October 31st, inclusive.

② Obtained from reports of U.S. Dept. of Agriculture.

Ex #38

BOARD OF TRADE OF THE CITY OF CHICAGO
TRANSPORTATION DEPARTMENT

EXHIBIT No. _____

I. & S. DOCKET No. 4718

GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

STATISTICS OF RECEIPTS AND SHIPMENTS OF GRAIN
AT AND FROM CHICAGO, ILL.,
AND PRODUCTION OF CORN IN ILLINOIS
FOR A SERIES OF YEARS

1939 RECEIPTS at Chicago

	Wheat. Bu.	Corn. Bu.	Oats. Bu.	Rye. Bu.	Barley. Bu.	Total. Bu.	Flour. Brls.	Soy Beans. Bu.
By Lake	211,000	.....	.....	386,000	344,000	1,541,000	.....	.....
Illinois Waterways	1,957,000	13,206,000	837,000	8,000	.....	16,008,000	.....	1,076,000
By Rail—								
Chicago & North Western Ry	1,045,000	6,601,000	3,359,000	239,000	4,333,000	15,577,000	1,311,000	770,000
Illinois Central R. R.	3,290,000	13,813,000	2,763,000	66,000	342,000	20,465,000	372,000	5,024,000
Chicago, Rock Island & Pacific Ry.	1,273,000	5,749,000	2,809,000	106,000	591,000	10,528,000	833,000	764,000
Chicago, B. & Q. R. R.	2,791,000	10,668,000	4,093,000	124,000	491,000	18,167,000	1,445,000	1,963,000
Chicago & Alton R. R.	1,968,000	4,094,000	1,243,000	7,000	31,000	7,323,000	785,000	1,458,000
Chi. & Eastern Ill. Ry.	2,754,000	4,294,000	618,000	12,000	14,000	7,682,000	344,000	2,374,000
Chicago, Milwaukee St. Paul & Pacific R. R.	3,912,000	4,259,000	2,121,000	256,000	3,196,000	13,734,000	2,525,000	378,000
Wabash Ry.	2,825,000	3,685,000	846,000	16,000	16,000	7,388,000	352,000	2,147,000
Chi Gt Western Ry.	612,000	1,424,000	884,000	62,000	1,511,000	4,496,000	653,000	142,000
Atchison, Topeka & Santa Fe Ry.	1,552,000	2,379,000	644,000	14,000	60,000	4,698,000	2,578,000	624,000
Minn., St. Paul & Sault Ste. Marie Ry.	27,000	21,000	55,000	40,000	800,000	943,000	7,000	.....
Elgin, Joliet & E. Ry.	33,000	320,000	180,000	4,000	78,000	1,065,000	.....	173,000
Eastern & Southeastern Lines	2,090,000	7,977,000	1,282,000	61,000	128,000	11,538,000	170,000	2,779,000
Total by Rail	26,122,000	65,774,000	20,987,000	1,007,000	11,782,000	123,682,000	11,575,000	18,486,000
Trucked in	410,000	5,006,000	122,000	8,000	4,000	5,549,000	.....	236,000
Total Receipts	26,710,000	83,985,000	21,946,000	2,009,000	12,130,000	146,780,000	11,575,000	19,886,000

CORN IN BUSHELS (Final 000 Omitted)

YEAR	RECEIPTS AT CHICAGO BY					# PRODUCTION IN ILLINOIS
	RAIL	LAKE	TRUCK	BARGE	TOTAL	
1931						353,128
1932	70,760	.....	132	.....	70,892	402,179
1933	91,432	.....	1,409	38	92,879	224,748
1934	54,206	.....	1,121	173	55,500	146,760
1935	27,841	3,623	783	723	32,970	318,510
1936	57,268	767	1,169	1,299	60,503	217,751
1937	45,311	18,720	177	2,019	66,727	449,616
1938	122,878	60	2,627	10,236	135,801	379,350
1939	65,774	.....	5,005	13,206	83,985	

#...Obtained from reports of U.S.Dept. of Agriculture.

RECEIPTS OF CORN AT CHICAGO

In Bushels (Final 000 Omitted)

BY	1938 RECEIPTS	1938 PER CENT OF TOTAL RECEIPTS	1939 RECEIPTS	1939 PER CENT OF TOTAL RECEIPTS
Lake	60	0.04%	-	-
Illinois Waterway	10,236	7.54%	13,206	15.72%
C.& N.W.Ry.	13,525	9.96%	6,601	7.86%
Illinois Central R.R.	26,120	19.23%	13,813	16.45%
C.R.I.& P.Ry.	14,400	10.60%	5,749	6.85%
C.B.& Q.R.R.	15,795	11.63%	10,668	12.70%
Alton R.R.	7,078	5.21%	4,094	4.87%
C.& E.I.Ry.	7,796	5.74%	4,284	5.10%
C.M.St.P.& P.R.R.	7,950	5.86%	4,259	5.07%
Wabash Ry.	8,452	6.22%	3,685	4.38%
C.G.W.R.R.	2,457	1.81%	1,424	1.70%
A.T.& S.F.Ry.	3,857	2.84%	2,379	2.83%
M.St.P.& S.S.M.Ry.	8	0.01%	21	0.03%
E.J.& E.Ry.	666	0.49%	820	0.98%
Eastern and Southeastern Railroads	14,774	10.88%	7,977	9.50%
Total by Rail	122,878		65,774	(1)
Trucked In	2,627	1.94%	5,005	5.96%
Total Receipts	135,801		83,965	(2)

(1)...53.53 per cent of 1938 total receipts by rail.

(2)...61.87 per cent of 1938 total receipts.

1932 SHIPMENTS from Chicago

	Wheat, Bu.	Corn, Bu.	Oats, Bu.	Rye, Bu.	Barley, Bu.	Total, Bu.	Flour, Brls.
Lake—To Buffalo	5,810,000	24,100,000	7,416,000	509,000		37,833,000	980,000
To Erie							175,000
To Ogdensburg		2,408,000	354,000			2,762,000	
To Oswego		1,048,000				1,048,000	
To Fairport			508,000			508,000	
To Toledo	234,000	88,000	2,421,000			2,734,000	
To Gladstone			357,000			357,000	
To New York		34,000				34,000	
To Philadelphia	144,000	304,000				448,000	
To Depot Harbor		373,000	739,000			1,112,000	116,000
To Collingwood		1,885,000	1,496,000			3,381,000	
To Toronto		675,000				675,000	
To Owen Sound		2,166,000	1,101,000			3,267,000	
To Montreal		1,288,000	362,000	186,000		1,816,000	
To Port Colbourne		845,000				845,000	
To Cardinal		1,053,000				1,053,000	
To Tiffin		1,674,000	640,000			2,314,000	
To Midland		302,000	200,000			502,000	
To Sarnia		216,000				216,000	
To Kingston		1,311,000		146,000		1,457,000	
To Goderich		428,000	266,000			694,000	
To Port McNicoll		667,000	153,000			820,000	
Total by Lake	5,908,000	40,636,000	18,107,000	821,000		63,462,000	1,274,000
Rail—							
Chicago & North Western Ry	847,000	579,000	343,000	10,000	197,000	1,875,000	530,000
Illinois Central R. R.	305,000	113,000	653,000	55,000	31,000	1,157,000	136,000
Chicago, Rock Island & Pacific Ry	1,000	13,000	354,000		4,000	372,000	3,000
Chicago, Burlington & Quincy R. R	1,000					1,000	20,000
Chicago & Alton R. R	28,000	5,000	8,000	2,000	38,000	79,000	80,000
Chicago & Eastern Illinois Ry	49,000	6,000	30,000	12,000	12,000	109,000	102,000
Chicago, Milwaukee, St. Paul & Pacific R. R	249,000	897,000	302,000	20,000	149,000	1,317,000	63,000
Wabash Ry. (West)	57,000	2,000	2,000			61,000	4,000
Chicago Great Western R. R	86,000	2,000			9,000	97,000	3,000
Atchison, Topeka & Santa Fe Ry	1,000	4,000	2,000		2,000	9,000	2,000
Minneapolis, St. Paul & Sault Ste. Marie Ry	24,000	108,000	82,000		7,000	279,000	44,000
Elgin, Joliet & Eastern Ry							
Eastern and Southeastern Lines	9,671,000	6,194,000	7,072,000	323,000	469,000	22,728,000	2,891,000
Total by Rail	11,317,000	6,981,000	8,847,000	421,000	918,000	28,784,000	3,918,000
TOTAL SHIPMENTS	17,225,000	47,617,000	26,754,000	1,242,000	918,000	91,746,000	5,192,000

1933 SHIPMENTS from Chicago

	Wheat, Bu.	Corn, Bu.	Oats, Bu.	Rye, Bu.	Barley, Bu.	Total, Bu.	Flour, Brls.
Lake—To Buffalo	6,855,000	19,164,000	1,855,000	708,000	.....	28,582,000	736,000
To Erie	.....	241,000	.....	.....	.....	241,000	140,000
To Toledo	104,000	.....	736,000	.....	.....	840,000	.....
To Ogdensburg	.....	753,000	.....	.....	.....	753,000	.....
To Milwaukee	.....	187,000	.....	.....	.....	187,000	.....
To Fairport	.....	.....	325,000	.....	.....	325,000	.....
To Oswego	.....	2,003,000	.....	.....	.....	2,003,000	.....
To New York	.....	.....	.....	.....	.....	.....	105,000
To Owen Sound	.....	2,043,000	2,013,000	.....	.....	4,056,000	.....
To Depot Harbor	.....	989,000	125,000	.....	.....	1,114,000	119,000
To Sarnia	.....	1,706,000	.....	.....	.....	1,706,000	.....
To Montreal	.....	20,000	.....	.....	.....	20,000	.....
To Collingwood	.....	2,199,000	234,000	.....	.....	2,433,000	.....
To Midland	.....	803,000	203,000	.....	.....	1,006,000	.....
To Toronto	.....	896,000	.....	.....	.....	896,000	.....
To Cardinal	.....	1,086,000	.....	.....	.....	1,086,000	.....
To Tiffin	.....	2,191,000	1,140,000	.....	.....	3,331,000	.....
To Goderich	.....	652,000	.....	.....	.....	652,000	.....
To Port Colbourne	.....	429,000	.....	.....	.....	429,000	.....
To Walkerville	.....	210,000	.....	.....	.....	210,000	.....
To Port McNicoll	.....	1,708,000	148,000	.....	.....	1,856,000	.....
Total by Lake	6,959,000	37,279,000	6,779,000	708,000	.....	51,725,000	1,100,000
Illinois Waterways	.....	.....	.....	217,000	.....	217,000	.....
Rail—							
Chicago & North Western Ry.	122,000	129,000	100,000	4,000	93,000	448,000	495,000
Illinois Central R. R.	545,000	1,191,000	1,002,000	66,000	180,000	2,984,000	123,000
Chicago, R. I. & Pacific Ry.	.....	56,000	30,000	73,000	2,000	161,000	5,000
Chicago, B. & Q. R. R.	.....	.....	.....	.....	.....	.....	6,000
Chicago & Alton Ry.	18,000	174,000	52,000	.....	59,000	303,000	53,000
Chicago & Eastern Ill. Ry.	23,000	.....	62,000	2,000	36,000	123,000	135,000
Chicago, Milwaukee, St. Paul & Pacific R. R.	87,000	247,000	74,000	22,000	91,000	521,000	39,000
Wabash Ry.	20,000	161,000	114,000	6,000	58,000	373,000	90,000
Chicago Great Western Ry.	3,000	.....	.....	.....	.....	3,000	2,000
Atchison, Topeka & Santa Fe Ry.	.....	3,000	14,000	.....	10,000	27,000	2,000
Minn., St. Paul & Sault Ste. Marie Ry.	31,000	25,000	18,000	.....	81,000	159,000	38,000
Elgin, Joliet & Eastern Ry.	.....	.....	.....	.....	.....	.....	.....
Eastern and Southeastern Lines	8,464,000	12,469,000	9,332,000	880,000	1,006,000	32,151,000	3,360,000
Total by Rail	9,323,000	14,463,000	10,798,000	1,053,000	1,616,000	37,253,000	4,348,000
Total Shipments	16,282,000	51,742,000	17,577,000	1,978,000	1,616,000	89,196,000	5,448,000

1934 SHIPMENTS from Chicago

	Wheat, Bu.	Corn, Bu.	Oats, Bu.	Rye, Bu.	Barley, Bu.	Total, Bu.	Flour, Brls.
By Lake—							
To Buffalo	10,890,000	14,700,000	912,000	137,000	.....	26,448,000	791,000
To Erie	.....	487,000	.....	.....	.....	487,000	178,000
To Ogdensburg	.....	585,000	.....	.....	.....	585,000	.....
To Duluth	.....	.....	.....	182,000	.....	182,000	.....
To New York	.....	.....	.....	.....	.....	.....	5,000
To Philadelphia	.....	216,000	.....	.....	.....	216,000	.....
To Port Colbourne	.....	270,000	.....	.....	.....	270,000	.....
To Sarnia	.....	231,000	.....	.....	.....	231,000	.....
To Cardinal	.....	980,000	.....	.....	.....	980,000	.....
To Walkerville	.....	98,000	.....	.....	.....	98,000	.....
To Goderich	850,000	761,000	.....	.....	.....	1,611,000	.....
To Toronto	.....	446,000	.....	.....	.....	446,000	.....
To Depot Harbor	.....	106,000	61,000	.....	.....	167,000	167,000
To Montreal	.....	18,000	.....	.....	.....	18,000	.....
To Midland	.....	689,000	304,000	.....	.....	993,000	.....
To Collingwood	.....	2,052,000	191,000	.....	.....	2,243,000	.....
To Tiffin	.....	806,000	265,000	.....	.....	1,071,000	.....
To Owen Sound	200,000	1,362,000	116,000	.....	.....	1,678,000	.....
To Norfolk	.....	50,000	.....	.....	.....	50,000	.....
Total by Lake	11,749,000	23,947,000	1,949,000	319,000	.....	37,964,000	1,975,000
Illinois Waterways	.....	.....	12,000	50,000	.....	62,000	.....
Rail—							
Chicago & North Western Ry.	794,000	190,000	282,000	886,000	231,000	2,198,000	530,000
Illinois Central R. R.	227,000	674,000	642,000	57,000	178,000	1,978,000	167,000
Chicago, R. I. & Pacific Ry.	8,000	4,000	140,000	222,000	.....	374,000	5,000
Chicago, B. & Q. R. R.	.....	.....	.....	.....	5,500	5,000	7,000
Chicago & Alton Ry.	64,000	215,000	564,000	21,000	98,000	962,000	97,000
Chicago & Eastern Ill. Ry	35,000	9,000	46,000	35,000	17,000	144,000	191,000
Chicago, Milwaukee, St Paul & Pacific R. R.	61,000	279,000	219,000	98,000	60,000	717,000	50,000
Wabash Ry.	36,000	275,000	174,000	7,000	41,000	513,000	61,000
Chicago Great Western Ry.	5,000	.....	14,000	.....	13,000	32,000	2,000
Atchison, Topeka & Santa Fe Ry.	9,000	8,000	127,000	9,000	7,000	160,000	2,000
Minn., St. Paul & Sault Ste. Marie Ry.	10,000	29,000	46,000	3,000	7,000	95,000	60,000
Elgin, Joliet & Eastern Ry	.....	.....	.....	.....	.....	.....	.....
Eastern and Southeastern Lines	5,013,000	13,497,000	9,312,000	3,474,000	1,573,000	33,869,000	3,653,000
Total by Rail	6,262,000	15,380,000	11,526,000	4,592,000	2,279,000	40,041,000	4,953,000
Total Shipments	18,011,000	39,327,000	13,488,000	4,961,000	2,279,000	77,967,000	6,928,000

1935 SHIPMENTS from Chicago

	Wheat. Bu.	Corn. Bu.	Oats. Bu.	Rye. Bu.	Barley. Bu.	Total. Bu.	Flour. Brls.	Soy Beans. Bu.
By Lake—								
To Buffalo	4,870,000	341,000	615,000	177,000	34,000	6,037,000	1,075,000	136,000
To Erie	.....	.....	.....	.....	.....	.....	123,000	.....
To Ogdensburg	.....	70,000	.....	.....	.....	70,000	.....	.....
To Duluth	611,000	.....	.....	.....	.....	611,000	.....	.....
To Oswego	.....	105,000	.....	.....	.....	105,000	.....	.....
To Depot Harbor	.....	.....	.....	.....	.....	.....	60,000	.....
To Montreal	.....	.....	.....	.....	.....	.....	.....	1,162,000
To Port McNicoll	.....	.....	.....	.....	.....	.....	.....	126,000
Total by Lake	5,481,000	516,000	615,000	177,000	34,000	6,823,000	1,268,000	1,568,000
Illinois Waterways	25,000	.....	111,000	30,000	.....	166,000	.....	.....
By Rail—								
Chicago & North Western Ry.	415,000	701,000	240,000	1,261,000	110,000	2,727,000	645,000	.....
Illinois Central R. R.	734,000	2,316,000	676,000	313,000	488,000	4,547,000	151,000	.....
Chi., R. I. & Pacific Ry.	75,000	217,000	364,000	547,000	.....	1,203,000	10,000	6,000
Chicago, B. & Q. R. R.	.....	8,000	6,000	5,000	.....	19,000	6,000	.....
Chicago & Alton Ry.	674,000	911,000	1,570,000	70,000	185,000	3,410,000	290,000	3,000
Chi. & Eastern Ill. Ry.	45,000	37,000	110,000	129,000	66,000	387,000	201,000	.....
Chicago, Milwaukee, St. Paul & Pacific R. R.	58,000	659,000	258,000	108,000	95,000	1,178,000	37,000	31,000
Wabash Ry.	249,000	131,000	475,000	156,000	9,000	1,090,000	263,000	60,000
Chi. Gt. Western Ry.	.....	10,000	16,000	2,000	3,000	31,000	5,000	.....
Atchison, Topeka & Santa Fe Ry.	14,000	10,000	161,000	4,000	8,000	197,000	16,000	2,000
Minn., St. Paul & Sault Ste. Marie Ry.	8,000	.....	30,000	.....	15,000	53,000	35,000	.....
Elgin, Joliet & E. Ry.	.....	.....	.....	.....	.....	.....	.....	.....
Eastern and Southwestern Lines	6,752,000	9,359,000	6,929,000	5,429,000	1,190,000	29,659,000	3,566,000	319,000
Total by Rail	9,014,000	14,359,000	10,836,000	8,064,000	2,229,000	44,501,000	5,330,000	421,000
Total Shipments	14,520,000	14,875,000	11,561,000	8,261,000	2,273,000	51,490,000	6,598,000	1,979,000

1936 SHIPMENTS from Chicago

	Wheat. Bu.	Corn. Bu.	Oats. Bu.	Rye. Bu.	Barley. Bu.	Total. Bu.	Flour. Brls.	Soy Beans. Bu.
By Lake—								
To Buffalo	8,824,000	6,492,000	509,000	.....	.....	15,825,000	983,000	.....
To Erie	.....	.....	.....	.....	.....	.....	288,000	.....
To Duluth	227,000	.....	.....	.....	.....	227,000	.....	.....
To Philadelphia	.....	70,000	.....	.....	.....	70,000	.....	.....
To Depot Harbor	.....	51,000	.....	.....	.....	51,000	234,000	.....
To Montreal	.....	.....	.....	.....	.....	.....	.....	1,921,000
To Collingwood	.....	943,000	.....	.....	.....	943,000	.....	.....
To Tiffin	.....	1,683,000	87,000	.....	.....	1,770,000	.....	.....
To Owen Sound	.....	215,000	.....	.....	.....	215,000	.....	.....
To Cardinal	.....	86,000	.....	.....	.....	86,000	.....	.....
To Midland	.....	.....	228,000	.....	.....	228,000	.....	.....
Total by Lake	9,051,000	9,549,000	884,000	.....	.....	19,434,000	1,515,000	1,921,000
Illinois Waterways	145,000	.....	.....	.....	.....	145,000	.....	.....
By Rail—								
Chicago & North Western Ry.	788,000	1,268,000	158,000	42,000	190,000	2,434,000	432,000	6,000
Illinois Central R. R.	1,630,000	1,342,000	1,621,000	426,000	641,000	5,660,000	129,000	83,000
Chi., R. I. & Pacific Ry.	94,000	22,000	56,000	352,000	52,000	566,000	445,000	10,000
Chicago, B. & Q. R. R.	.....	9,000	.....	.....	.....	9,000	4,000	.....
Chicago & Alton R. R.	1,101,000	1,076,000	1,162,000	155,000	223,000	3,717,000	441,000	217,000
Chi. & Eastern Ill. Ry.	213,000	43,000	67,000	118,000	100,000	541,000	196,000	.....
Chicago, Milwaukee, St. Paul & Pacific R. R.	299,000	2,173,000	388,000	67,000	220,000	3,147,000	56,000	284,000
Wabash Ry.	448,000	194,000	396,000	61,000	91,000	1,190,000	340,000	171,000
Chi. Gt. Western Ry.	8,000	2,000	.....	.....	8,000	18,000	88,000	5,000
Atchison, Topeka & Santa Fe Ry.	7,000	38,000	213,000	21,000	13,000	292,000	11,000	1,000
Minn., St. Paul & Sault Ste. Marie Ry.	2,000	18,000	44,000	.....	96,000	159,000	17,000	.....
Elgin, Joliet & E. Ry.	.....	.....	.....	.....	.....	.....	.....	.....
Eastern and Southwestern Lines	7,068,000	9,589,000	12,986,000	5,272,000	1,677,000	36,562,000	3,752,000	1,460,000
Total by Rail	11,565,000	15,784,000	17,091,000	6,544,000	3,310,000	54,296,000	5,911,000	2,147,000
Total Shipments	20,762,000	25,333,000	17,915,000	6,544,000	3,310,000	73,884,000	7,426,000	4,368,000

1937 SHIPMENTS from Chicago

	Wheat. Bu.	Corn. Bu.	Oats. Bu.	Rye. Bu.	Barley. Bu.	Total. Bu.	Flour. Brls.	Soy Beans. Bu.
By Lake—								
To Buffalo	14,162,000	4,906,000	1,121,000	290,000	.....	20,478,000	393,000	224,000
Erie	.....	.....	.....	.....	.....	.....	118,000	.....
Duluth	483,000	.....	.....	.....	.....	483,000	.....	.....
Albany	.....	36,000	.....	.....	.....	36,000	.....	.....
Ogdensburg	.....	368,000	.....	.....	.....	368,000	.....	.....
Goderich	272,000	252,000	.....	.....	.....	525,000	.....	.....
Depot Harbor	.....	.....	.....	.....	.....	.....	207,000	.....
Kingston	190,000	105,000	215,000	.....	.....	510,000	.....	.....
Midland	100,000	.....	1,213,000	.....	.....	1,313,000	.....	.....
Montreal	1,544,000	221,000	552,000	696,000	.....	3,365,000	.....	989,000
Oswego	.....	.....	.....	73,000	.....	73,000	.....	.....
Port Colbourne	1,119,000	101,000	64,000	119,000	.....	1,403,000	.....	119,000
Port McNicol	.....	183,000	.....	.....	.....	183,000	.....	.....
Quebec	86,000	.....	280,000	.....	.....	366,000	.....	.....
Owen Sound	.....	.....	305,000	.....	.....	305,000	.....	.....
Three Rivers	909,000	140,000	133,000	269,000	.....	1,451,000	.....	.....
Tiffin	.....	.....	389,000	.....	.....	389,000	.....	.....
Sarnia	.....	350,000	.....	.....	.....	350,000	.....	.....
Toronto	389,000	305,000	301,000	491,000	.....	1,386,000	.....	.....
Walkerville	.....	102,000	.....	.....	.....	102,000	.....	.....
Total by Lake	19,254,000	7,079,000	4,803,000	1,940,000	.....	33,076,000	718,000	1,282,000
By Illinois Waterways	.....	123,000	40,000	10,000	16,000	189,000	.....	.....
By Rail—								
Chicago & North Western Ry.	1,347,000	779,000	64,000	47,000	267,000	2,404,000	469,000	59,000
Illinois Central R. R.	597,000	1,782,000	1,428,000	434,000	500,000	4,741,000	126,000	47,000
Chi., R. I. & Pacific Ry.	12,000	635,000	8,000	220,000	90,000	965,000	456,000	.....
Chicago, B. & Q. R. R.	13,000	173,000	34,000	.....	5,000	230,000	9,000	.....
Chicago & Alton R. R.	516,000	1,716,000	710,000	98,000	90,000	2,625,000	468,000	488,000
Chi. & Eastern Ill. Ry.	370,000	29,000	144,000	45,000	97,000	685,000	171,000	3,000
Chicago, Milwaukee, St. Paul & Pacific R.R.	236,000	1,968,000	435,000	10,000	364,000	3,113,000	34,000	289,000
Wabash Ry.	188,000	2,563,000	435,000	7,000	123,000	3,355,000	251,000	210,000
Chi. Gt. Western Ry.	10,000	14,000	6,000	.....	.....	30,000	49,000	46,000
Atchison, Topeka & Santa Fe Ry.	39,000	137,000	20,000	.....	30,000	226,000	2,000	4,000
Minn., St. Paul & Sault Ste. Marie Ry.	3,000	.....	20,000	.....	34,000	57,000	32,000	2,000
Elgin, Joliet & E. Ry.	.....	.....	.....	.....	.....	.....	.....	.....
Eastern and Southeastern Lines	9,426,000	13,497,000	18,307,000	2,706,000	1,380,000	45,316,000	3,802,000	1,321,000
Total by Rail	12,756,000	22,823,000	22,221,000	3,564,000	2,996,000	64,353,000	5,871,000	2,570,000
Total Shipments	32,009,000	30,025,000	27,064,000	5,514,000	3,012,000	97,624,000	6,589,000	3,852,000

1938 SHIPMENTS from Chicago

	Wheat Bu.	Corn Bu.	Oats Bu.	Rye Bu.	Barley Bu.	Total Bu.	Flour Brls.	Soy Beans Bu.
By Lake—								
To Buffalo	10,460,000	16,052,000	485,000		30,000	27,048,000	1,262,000	.....
Erie							416,000	.....
Ogdensburg		512,000						.....
New York		17,000				512,000	.....	.....
Oswego	20,000	13,299,000				17,000	.....	.....
Duluth	81,000					13,358,000	.....	.....
Philadelphia		66,000				81,000	.....	.....
Depot Harbor						66,000	.....	.....
Port Colbourne	1,060,000	9,975,000				.....	205,000	.....
Kingston	100,000	11,949,000				11,035,000	.....	.....
Sarnia		1,220,000				12,049,000	.....	.....
Montreal	48,000	5,318,000	35,000	70,000	144,000	1,220,000	.....	.....
Owen Sound		2,393,000	194,000			5,605,000	.....	982,000
Toronto	268,000	4,904,000	171,000			2,587,000	.....	35,000
Quebec		833,000				5,363,000	.....	462,000
Three Rivers	236,000	4,636,000		21,000		833,000	.....	.....
Walkerville		535,000				4,873,000	.....	421,000
Sorel		98,000				535,000	.....	.....
Tiffin	352,000	2,681,000	490,000			98,000	.....	.....
Goderich		2,214,000				3,502,000	.....	162,000
Sweden		61,000				2,214,000	.....	260,000
Midland		1,278,000	116,000			61,000	.....	.....
Cardinal		429,000				1,394,000	.....	.....
Collingwood		1,617,000				429,000	.....	.....
Prescott		1,043,000				1,617,000	.....	.....
						1,043,000	.....	.....
Total by Lake	12,964,000	81,121,000	1,491,000	91,000	174,000	96,531,000	1,883,000	2,305,000
By Illinois Waterways	30,000	.....	.....	.....	.....	30,000	.....	.....
By Rail—								
Chicago & North Western Ry	1,580,000	1,692,000	90,000	14,000	30,000	3,878,000	548,000	200,000
Illinois Central R. R.	967,000	718,000	1,606,000	167,000	372,000	3,737,000	102,000	94,000
Chi. R. I. & Pacific Ry	5,000	1,000	.....	3,000	10,000	21,000	29,000	21,000
Chicago, B. & Q. R.R.	13,000	23,000	9,000	1,000	8,000	54,000	5,000	17,000
Chicago & Alton R. R.	77,000	1,213,000	198,000	30,000	109,000	1,627,000	325,000	277,000
Chi. & Eastern Ill. Ry	286,000	125,000	32,000	174,000	66,000	682,000	184,000	.....
Chicago, Milwaukee, St. Paul & Pacific R. R.	345,000	2,461,000	585,000	4,000	81,000	3,466,000	22,000	549,000
Wabash Ry.	908,000	644,000	428,000	6,000	83,000	1,764,000	208,000	536,000
Chi. Gt. Western Ry.	.....	.....	.....	.....	.....	.....	1,000	79,000
Atchison, Topeka & Santa Fe Ry.	7,000	19,000	2,000	.....	.....	28,000	22,000	5,000
Minn. St. Paul & Sault Ste. Marie Ry.	4,000	2,000	38,000	2,000	20,000	66,000	31,000	.....
Elgin, Joliet & E. Ry.	.....	.....	.....	.....	.....	.....	.....	.....
Eastern and Southeastern Lines	8,280,000	10,669,000	18,150,000	1,475,000	1,731,000	40,455,000	3,486,000	1,123,000
Total by Rail	12,496,000	17,659,000	21,178,000	1,876,000	2,782,000	55,791,000	5,168,000	2,896,000
Total Shipments	25,170,000	98,680,000	22,669,000	1,967,000	2,956,000	152,342,000	7,051,000	5,201,000

1939 SHIPMENTS from Chicago

	Wheat Bu.	Corn Bu.	Oats Bu.	Rye Bu.	Barley Bu.	Total Bu.	Flour Brls.	Soy Beans Bu.
By Lake—								
To Buffalo	7,929,000	16,832,000	160,000	.....	.....	24,821,000	1,390,000	4,114,000
Erie		534,000				534,000	434,000	561,000
Ogdensburg		552,000				552,000	.....	.....
Oswego		1,191,000				1,191,000	.....	776,000
Detroit						.....	.....	70,000
Philadelphia		54,000				54,000	.....	.....
New York	60,000	36,000				96,000	.....	.....
Depot Harbor						.....	207,000	.....
Walkerville		105,000				105,000	.....	.....
Sorel	101,000					101,000	.....	.....
Tiffin	111,000	3,686,000	62,000			3,859,000	.....	.....
Sarnia		117,000				117,000	.....	.....
Kingston	345,000	355,000				700,000	.....	.....
Montreal	740,000	908,000				1,648,000	.....	1,331,000
Owen Sound		566,000				566,000	.....	.....
Toronto		572,000				572,000	.....	316,000
Collingwood		543,000				543,000	.....	.....
Pt. Colbourne	200,000	1,784,000				1,984,000	.....	1,220,000
Three Rivers	191,000	817,000				918,000	.....	1,485,000
Goderich		598,000	141,000			739,000	.....	.....
Midland		1,470,000	85,000			1,555,000	.....	235,000
Cardinal		198,000				198,000	.....	.....
Prescott		586,000				586,000	.....	.....
Pt. McNicoll		1,043,000				1,043,000	.....	167,000
Denmark						.....	.....	222,000
Total by Lake	9,487,000	32,535,000	449,000			42,471,000	2,031,000	10,467,000
By Illinois Waterways					16,000	16,000	.....	.....
By Rail—								
Chicago & North Western Ry.	925,000	1,339,000	52,000	25,000	145,000	2,509,000	551,000	130,000
Illinois Central R. R.	1,152,000	875,000	1,011,000	131,000	513,000	3,682,000	174,000	62,000
Chi., R. I. & Pacific Ry.	46,000	160,000	34,000	13,000	98,000	350,000	23,000	63,000
Chicago, B. & Q. R. R.	23,000	6,000	12,000	1,000	19,000	61,000	2,000	5,000
Chicago & Alton R. R.	42,000	107,000	110,000	5,000	107,000	371,000	96,000	79,000
Chi. & Eastern Ill. Ry.	54,000	31,000	26,000	527,000	168,000	806,000	130,000	11,000
Chicago, Milwaukee, St. Paul & Pacific R. R.	238,000	2,304,000	510,000	8,000	66,000	3,126,000	24,000	874,000
Wabash Ry.	746,000	728,000	518,000	9,000	157,000	2,158,000	228,000	587,000
Chi. Gt. Western Ry.	.....	2,000	.....	.....	.....	2,000	1,000	43,000
Atchison, Topeka & Santa Fe Ry.	11,000	13,000	6,000	6,000	6,000	42,000	20,000	2,000
Minn. St. Paul & Sault Ste. Marie Ry.	4,000	.....	23,000	.....	16,000	43,000	20,000	.....
Elgin, Joliet & E. Ry.	.....	.....	.....	.....	.....	.....	.....	.....
Eastern & Southeastern Lines	10,665,000	16,079,000	18,012,000	1,162,000	1,396,000	47,314,000	3,948,000	1,311,000
Total by Rail	13,908,000	21,664,000	20,314,000	1,887,000	2,691,000	60,464,000	5,217,000	2,917,000
Total Shipments	23,395,000	54,199,000	20,763,000	1,987,000	2,707,000	102,951,000	7,248,000	13,384,000

Comparative costs in grain shipments from a 9½¢ IP Point, 5¢ Lake point, and a 3¢ barge point and direct trucking to Chicago.

	Via 9½¢ IP rate to Chicago	Via 5¢ Lake rate to Chicago	Via 3+¢ Barge rate to Chicago	Via truck direct to Chicago
Cost from farm to local river market by truck	01.00	01.00	01.00	
Local elevator expense	01.50	01.50	01.00	00.25
River elevator expense			01.50	
River elevator trimming expense on barges			00.38	
Freight to Chicago on corn	05.33	02.80	01.75	05.00
Weighing & Inspection charge	00.25	00.25	00.25	00.25
Commission in Chicago	01.00	01.00	00.50	01.00
***AS FAR AS 5¢ LAKE RATE AND TRUCKED CORN WILL GO; AS IT HAS NO FURTHER BILLING; SHOWS EXPENSE AS	(09.08)	(06.55)	(06.38)	(06.50)
26¢ New York rate from Chicago on corn per bu.	14.56		14.56	
Transfer charges in Chicago	02.00		02.00	
Total expenses	25.64		22.94	
SAVINGS TO THE FARMERS IN THE TERRITORY ADJACENT TO THE BARGE HAUL			02.69 ✓	
	25.64		25.64	

***CORN ON A 5¢ LAKE RATE OR BY TRUCK SELLS FROM ½¢ TO 2½¢ UNDER IP BILLING CORN

ALSO, showing from 12¢ rate points IP in comparison with 6½¢ lake rate to Chicago and 3¢ barge rate, ALSO, what direct buying by river houses could do to the local dealers.

	Via 12¢ IP rate to Chicago	Via 6½¢ lake rate to Chicago	Via 3+¢ rate on barge to Chicago	Via truck direct to Chicago	Direct river buying on 9½¢ IP rate	Direct river buying on 12¢ rate
Cost from farm to local river market by truck	01.00	01.00	02.50		01.00	02.50
Local elevator expense	01.50	01.50	01.00	00.25	00.25	00.25
River elevator expense			01.50		01.50	01.50
River elevator trimming expense on barges			00.38		00.38	00.38
Freight to Chicago on corn	06.72	03.64	01.75	07.00	01.75	01.75
Weighing & Inspection charge	00.25	00.25	00.25	00.25	00.25	00.25
Commission in Chicago	01.00	01.00	00.50	01.00	00.50	00.50
***AS FAR AS 5¢ LAKE RATE AND TRUCKED CORN WILL GO; AS IT HAS NO FURTHER BILLING; SHOWS EXPENSE AS	(10.47)	(07.39)	(07.88)	(08.50)	(05.63)	(07.13)
26¢ New York rate from Chicago on corn per bu.	14.56		14.56		14.56	14.56
Transfer charges in Chicago	02.00		02.00		02.00	02.00
Total expenses	27.03		24.44		22.19	23.69
SAVINGS TO THE FARMERS IN THE TERRITORY ADJACENT TO THE BARGE HAUL			02.59		03.45	03.34
	27.03		27.03		25.64	27.03

Chart showing items of expense on moving grain from the farm to Chicago and then on to New York.

Comparative expenses on different ways of moving grain and different rates.

W. H. Allen.
Morris Ills
Dec 14-1939.

Exhibit No.
I.C. S. Docket 4718
Witness

Statement showing production of Corn in Illinois and Indiana counties shown in Exhibit ( ) for the Crop Year 1938.

Illinois County	Production (In bushels)	Indiana County	Production (In bushels)
Bureau	9,560,000		
Cook	2,664,000		
DuPage	1,929,600		
Ford	5,734,000		
Grundy	4,730,000		
Iroquois	11,585,200	Benton	4,344,000
Kane	5,038,800	Jasper	3,506,300
Kankakee	6,516,000	Lake	2,253,500
Kendall	3,515,600	LaPorte	2,753,000
LaSalle	13,925,000	Newton	3,051,500
Lee	7,195,200	Porter	2,036,300
Livingston	12,487,000	Pulaski	2,288,500
McLean	14,565,000	Stark	1,734,700
Marshall	3,817,100	White	4,281,300
Peoria	4,753,200		
Putnam	1,555,200		
Tazewell	5,684,000		
Whiteside	6,910,000		
Will	8,109,000		
Woodford	5,756,400		
Total	136,030,300	Total	26,249,100

Total Corn Production Illinois 379,350,000 Bushels for Year 1938

Total Corn Production Indiana 173,389,000 Bushels for Year 1938

Authority - Illinois Cooperative Crop Reporting Service and Department Agricultural Statistics Purdue University, for Year 1938.

I.& S. Docket 4718
Witness
Exhibit No. 61

Statement Showing Rates on
Grain
from origins in Illinois and Indiana destined to New York, N.Y. and Buffalo, N.Y. All Rail as compared with Barge - Rail
(Rates shown in cents per 100 Pounds)

From ILLINOIS / TO		New York, N.Y. Distance		Rate		Buffalo, N.Y. Distance		Rate
Station	County	Rail (Short Line)	Rail (Via Chicago)	Domestic	Export	Rail (Short Line)	Rail (Via Chicago)	
				BARGE-RAIL				
LaSalle	LaSalle	958	*987			566	*594	
Morris	Grundy	921	*948	30 1/8	21 5/8	531	*555	25 5/8
Ottawa	LaSalle	943	*972			554	*579	
Seneca	LaSalle	931	*959			542	*566	
				ALL-RAIL				
Beaverville	Iroquois	899	961	34½	26	521	568	28½
Cazenovia	Woodford	978	1022	38	29½	578	629	32
Cedar Point	LaSalle	966	1044	38	29½	627	651	32
Deer Grove	Whiteside	1005	1005	38	29½	608	612	32
Delavan	Tazewell	988	1047	38	29½	615	654	32
Kempton	Ford	919	974	36½	28	-	-	-
LaRose	Marshall	968	1006	38	29½	588	613	32
Lexington	McLean	957	1000	38	29½	571	607	32
McNabb	Putnam	964	1038	38	29½	584	645	32
Malden	Bureau	975	988	38	29½	587	595	32
Mazon	Grundy	922	957	36	27½	539	564	30
Minier	Tazewell	974	1034	38	29½	601	641	32
Missal	Livingston	951	1011	36	27½	557	618	30
Mokena	Will	919	919	34½	26½	526	526	28½
Monee	Will	906	924	34½	26½	-	-	-
Naperville	DuPage	919	919	34½	26	526	526	28½
Normandy	Bureau	1010	1010	38	29½	618	617	32
Princeville	Peoria	997	1035	38	29½	617	642	32
Reddick	Kankakee	911	956	36	27½	531	563	30
Standard	Putnam	964	1042	38	29½	624	649	32
Steward	Lee	967	967	36½	28	574	574	30½
Shabbona	DeKalb	957	957	36	27½	564	564	30
Sugar Grove	Kane	935	935	34½	26	542	542	28½
Sinley Park	Cook	913	913	34½	26	520	520	28½
Walnut	Tazewell	985	999	38	29½	602	607	32
Watseka	Iroquois	888	968	35½	27	-	-	-
Yorkville	Kendall	940	940	35½	27	547	547	29½

From INDIANA / TO		New York, N.Y.				Buffalo, N.Y.		
		Distance		Rate		Distance		
Station	County	Rail (Short Line)	Rail (Via Chicago)	Domestic	Export	Rail (Short Line)	Rail (Via Chicago)	Rate
				ALL RAIL				
Belshaw	Lake	874	937	34½	26	493	544	28½
Fowler	Benton	869	991	34½	26	504	598	28½
Hebron	Porter	857	-	34	26	473	-	27
Knox	Stark	824	-	34	26	444	-	25
LaPorte	LaPorte	840	-	34	26	440	-	25
Monticello	White	871	989	34	26	460	596	27
Morocco	Newton	885	959	34½	26	503	566	28½
Rensselaer	Jasper	897	963	34	26	485	570	28
Winnamac	Pulaski	844	-	34	26	468	-	27

*Barge to Chicago, Ill., Rail Beyond.

Tariff Authority For Rates

B. T. Jones	I.C.C.	3356
N.Y.C.	"	1939
C.C.C.& St.L.	"	8855
L.E.Kipp	"	A-2852
CI&L	"	4559
P.R.R.	"	1861

Tariff Authority for Mileages

Carrier	ICC No.
AT&SF Ry	12714
B&O RR	22070
CRRofNJ	5033
C&A RR	89
C&NW Ry	9986
CB&Q RR	17392
CRI&P Ry	C-11924
CMStP&P RR	B- 6113
DL&W RR	22030
Erie RR	A- 5634
Ill.Cent.RR	7614
LV RR	C- 8325
NYC System	LS-1536
NYC&StL RR	1332
Pennsylvania RR	2398
Reading Co	1110
Wabash Ry	6442

I. & S. DOCKET NO. 4718
EXHIBIT NO. 63
WITNESS: W. G. OLIPHANT

BULK GRAIN MOVEMENTS VIA FEDERAL BARGE LINES
(Net Tons)
AUTHORITY: Accounting Department Records

FROM		TO	C.C.C. CLASSN	COM.	1933	1934	1935	1936	1937	1938	1939
		Chicago	10	Wheat		2385					
Burlington,	Ia.	St. Louis	10	Wheat			299			2990	
			20	Corn						223	
			10	Wheat				2094			
Chicago,	Ill.	St. Louis	40	Rye	6042	906	430				
			10	Wheat						513	240
Cora Island,	Mo.	St. Louis	20	Corn				28		73	22
Davenport,	Ia.	St. Louis	20	Corn		140				1108	574
E.St.Louis,	Ill.	Chicago	10	Wheat					5842	2400	1500
			10	Wheat						294	3448
Glasgow,	Mo.	St. Louis	20	Corn						106	1121
			10	Wheat	438		353		359	371	2348
		St. Louis	20	Corn			619	976		1219	3159
Havana,	Ill.		40	Rye						374	606
			10	Wheat	350	5699	707	6604	5893		
		Chicago	20	Corn	265	2794			2451		
		Chicago	10	Wheat							1480
Kampville,	Ill.	St. Louis	10	Wheat							2117
		Chicago	10	Wheat			2728		16368	1198	40312
			10	Wheat						7709	7663
Kansas City,	Mo.	St. Louis	20	Corn							892
		Chicago	10	Wheat			255				
			20	Corn			85				
Keithsburg,	Ill.		10	Wheat						153	1710
		St. Louis	20	Corn						8	293
			10	Wheat					725		
		Chicago	20	Corn		717					
Lacon,	Ill.		30	Oats					264		
			20	Corn	811					311	
		St. Louis	30	Oats							317
Leavenworth,	Kan.	Chicago	10	Wheat			2699				
Minneapolis,	Minn.	St. Louis	40	Barley				2691	160		
Montezuma,	Ill.	Chicago	10	Wheat		2753	215	1455	1670		
		St. Louis	10	Wheat							2387
			20	Corn		1058	12069	23942	3286		
Morris,	Ill.	Chicago	30	Oats			255	198	991		
		St. Louis	20	Corn				2009			
Muscatine,	Ia.	St. Louis	20	Corn						384	
			10	Wheat				417			462
Naples,	Ill.	St. Louis	20	Corn							426
			10	Wheat			158	1027	218		
		Chicago	20	Corn	393		179				
Oquawka,	Ill.		30	Oats					56		
			10	Wheat			217	341	348	516	791
		St. Louis	20	Corn			115			91	421
Pekin,	Ill.	St. Louis	20	Corn		335					
		Chicago	10	Wheat			2992		2709	2245	
Peoria,	Ill.	Chicago	20	Corn	300						
Peru,	Ill.	Chicago	20	Corn	360						
St. Louis,	Mo.	Chicago	10	Wheat	2989	30366	10025	1994	12427		
			10	Wheat	3628	152					
			20	Corn	1947	419					
St. Paul,	Minn.	St. Louis	30	Oats	3083	138		400			
			40	Barley	2659			1880			
			10	Wheat						1552	8201
Waverly,	Mo.	St. Louis	20	Corn						708	449
			30	Oats						94	
ALL PORTS (Total)		Chicago			4657	45772	32367	35220	52900	5843	43292
		St. Louis			18608	1964	2033	10636	867	18797	37647

EXHIBIT NO. 67
WITNESS J. J. Schimmel

SCHEDULE OF RATES APPLYING ON GRAIN COMPARING INDEPENDENT BARGE AND FEDERAL BARGE RATES WITH RAIL INTRASTATE AND RAIL ILLINOIS PROPORTIONAL RATES FROM ORIGINS SPECIFIED ON ILLINOIS, MISSISSIPPI AND MISSOURI RIVERS

RATES IN CENTS PER HUNDRED POUNDS

FROM	BARGE MILEAGE (NOTE A)	INDEPENDENT BARGE (NOTE B)	FEDERAL BARGE (NOTE C)	RAIL INTRASTATE (NOTE D)	RAIL ILLINOIS PROPORTIONAL (NOTE E)	RAIL MILEAGE
TO CHICAGO, ILLINOIS						
Morris, Ill. •Trimming - Chicago	57.7	3.125 .625 3.75	6.50 Z .625 7.125	5.0 - 5.0	9.5 - 9.5	61.3
Seneca, Ill. •Trimming - Chicago	68.0	3.125 .625 3.75	6.50 Z .625 7.125	5.5 - 5.5	9.5 - 9.5	71.5
Ottawa, Ill. •Trimming - Chicago	81.6	2.75 .625 3.375	6.50 Z .625 7.125	5.5 - 5.5	10.0 - 10.0	84.1
LaSalle, Ill. •Trimming - Chicago	96.9	2.675 .625 3.30	6.50 Z .625 7.125	9.0 - 9.0	12.0 - 12.0	98.5
Hennepin, Ill. •Trimming - Chicago	113.5	3.0 .625 3.625	6.50 Z .625 7.125	- - -	- - -	-
Henry, Ill. •Trimming - Chicago	125.4	3.5 .625 4.125	6.50 Z .625 7.125	- - -	12.0 - 12.0	127.2
Lacon, Ill. •Trimming - Chicago	131.9	3.5 .625 4.125	6.50 Z .625 7.125	- - -	12.0 - 12.0	128.5
Chillicothe, Ill. •Trimming - Chicago	140.0	3.5 .625 4.125	6.50 Z .625 7.125	- - -	12.0 - 12.0	142.2
Peoria, Ill. •Trimming - Chicago	158.4	4.0 .625 4.625	6.50 Z .625 7.125	- - -	12.0 - 12.0	160.6
Pekin, Ill. •Trimming - Chicago	168.2	4.0 .625 4.625	6.50 Z .625 7.125	- - -	12.0 - 12.0	169.9
Havana, Ill. •Trimming - Chicago	200.9	4.5 .625 5.125	6.50 Z .625 7.125	- - -	12.0 - 12.0	200.8
St. Louis, Mo. •Trimming - Chicago	359.0	- - -	6.50 Z .625 7.125	- - -	15.0 - 15.0	282.4
Kansas City, Mo. •Trimming - Chicago	722.2	- - -	10.75 Y .625 11.375	- - -	16.0 - 16.0	452

Z - 6¢ per hundred rate applies on bulk grain minimum weight 1,500 tons.
7¢ per hundred rate applies on bulk grain minimum weight 1,000 tons.
Both rates apply from or to elevators located on Calumet River and handled via Lake Michigan or the Sag Canal, and also from or to elevators located on the Chicago River, including north or south branches thereof.

Y - Rate of 10.75¢ per hundred is made on combination 4.25¢per hundred pounds, minimum 140 tons Kansas City, Mo. to St.Louis,Mo.plus 6.50¢ per hundred pounds minimum 1,500 tons. The combination rate applies from or to elevators on Calumet River and handled via Lake Michigan or the Sag Canal and also from or to elevators located on the Chicago River, including North and South Branches thereof.

* - The trimming charge at Chicago, Ill., .625¢ as shown, is assessed by the Chicago Grain Trimmers Assn. whoperform the trimming service for unloading all barge grain. They maintain charges of $4.25 per 1,000 bushels on barges under 20,000 bushels, and $3.50 per 1,000 bushels on barges of 20,000 bushels or more. The Chicago Grain Trimmers Assn. furnish the man power to operate the power shovels which pull the grain from the hold of the barge to the marine leg. The power and shovels are maintained by the elevator oporator.

NOTE A - Barge mileages measure from origin point to mouth of Illinois River, Michigan Avenue Bridge. Official light list of United States Department of Commerce as of 1937.

EXHIBIT NO.
WITNESS J. J. Schimmel

NOTE B - The independent barge lines who maintain a regular service and rates are as follows: John I. Hay Company, Chicago, Ill.; Barry Barge Line, Chicago, Ill.; and A. L. Mechling Barge Line, Joliet, Ill. The rates shown include only the cost of transporting the grain from origin point to Chicago, Ill., and do not include loading grain into barges or unloading grain from barges. In some instances, the barge lines name rates in cents per bushel, and in other instances in cents per hundred pounds. To simplify, the rates named by barge lines on basis of per bushel have been reduced to cents per hundred to apply on corn only. In such instances where the rates are named in cents per bushel and reduced to cents per hundred pounds, namely, Morris, Seneca and LaSalle, Ill., if we were to calculate on wheat, the independent barge rate on wheat and soya beans from Morris and Seneca, Ill. would be 2.915¢, or .335¢ less than corn, and the rate from LaSalle, Ill. on wheat and soya beans would be 2.5¢ per hundred or .025¢ less than corn.

NOTE C - Bulk grain rates published by the Federal Barge Lines are port to port rates and do not include switching to riverside front or elevator, nor elevation at origin point, nor do they include unloading, switching or elevation at port of destination.

NOTE D - Rail intrastate rates are applicable only on traffic originating at or destined to points located in Illinois and handled wholly within the State of Illinois, and apply on corn only. No transit privilege will be accorded. Also, rates are published to expire June 30, 1940, unless sooner cancelled, changed or extended.

NOTE E - Rail Illinois proportional rates are published by the origin carrier and are the applicable specific division to Chicago of the through rate to destination named in Agent B. T. Jones' Tariff 245-G. The so called even rate points are published in the same manner, but in this instance, the local and the specific rates are the same. Such even rate origin rates may be applied interstate without penalty.

TARIFF AUTHORITIES

C.R.I.P. Ry. Tariff 34560-B	-	I.C.C. No. C-12847
Alton R.R. Tariff 1604-O	-	I.C.C. No. 208
I.C. R.R. Tariff 1537-K	-	I.C.C. No. A-11148
Federal Barge Tariff 12-Z	-	
C.R.I.P. Ry. Tariff 33300	-	I.C.C. No. C-11924
Alton R.R. Tariff 250-E	-	I.C.C. No. 90
C.I.M. R.R. Tariff 20-C	-	I.C.C. No. B-271
A.T.S.F. Ry. Tariff 9000-C	-	I.C.C. No. 12714
L.E.Kipp, W.T.L.Tariff 332-B	-	I.C.C. No. A-2942

EXHIBIT NO. 68

WITNESS J. J. Schimmel

SCHEDULES SHOWING PROPORTIONAL, RESHIPPING AND LOCAL RATES ON GRAIN, ALSO MILEAGES FROM CHICAGO, ILLINOIS, PEORIA, ILLINOIS AND ST. LOUIS, MISSOURI, TO DESTINATIONS IN CENTRAL FREIGHT ASSOCIATION, NEW ENGLAND, TRUNK LINE AND VIRGINIA CITIES TERRITORIES

RATES IN CENTS PER HUNDRED POUNDS

FROM CHICAGO, ILLINOIS

	SEPARATELY PUBLISHED RATE FACTORS APPLICABLE FROM BEYOND					
C.F.A. TERRITORY	TRANS-MISSISIPPI RIVER (Note 20) (Note 50) 535-A	NORTHWEST (Note 40-535-A)	RESHIPPING (Note 45 - 535-A)	PROPORTIONAL (Note 20 - 245 F & G)	LOCAL	MILEAGE
TO : Buffalo, N. Y.	18.5	21.5	20.0		28.5	498
Cincinnati, O.	12.5	15.5	13.5		20.5	282.2
Circleville, O.	14.5	17.5	19.0		25.0	320.7
Detroit. Mich.	12.5	15.5	15.0		17.0	266.5
Indianapolis, Ind.	11.5	14.5	12.0		17.0	180.9
Louisville, Ky.	16.0	17.5	15.0		22.0	290.9
Pittsburgh, Pa.	18.5	21.5	20.0		28.5	454
Toledo, O.	12.5	15.5	15.0		17.0	229.1
NEW ENGLAND TERRITORY						
TO : Boston, Mass. (Domestic)				28.0	36.5	972
Boston, Mass. (Export)				17.5	26.0	972
Portland, Me. (Domestic)				28.0	36.5	1044
Portland, Me. (Export)				17.5	26.0	1044
TRUNK LINE TERRITORY						
TO : Philadelphia, Pa. (Domestic)				24.0	32.5	810
Philadelphia, Pa. (Export)				16.5	25.0	810
New York, N. Y. (Domestic)				26.0	34.5	890
New York, N. Y. (Export)				17.5	26.0	890
VIRGINIA CITIES TERRITORY						
TO : Baltimore, Md. (Domestic)				23.0	31.5	761
Baltimore, Md. (Export)				16.0	24.5	761
Norfolk, Va. (Domestic)				23.0	31.5	914
Norfolk, Va. (Export)				16.0	24.5	914

FROM PEORIA, ILLINOIS

	SEPARATELY PUBLISHED RATE FACTORS APPLICABLE FROM BEYOND					
C.F.A. TERRITORY	TRANS-MISSISIPPI RIVER (Note 20 - 535-A)	NORTHWEST (Note 40-535-A)	RESHIPPING (Note 45 - 535-A)	PROPORTIONAL	LOCAL	MILEAGE
TO : Buffalo, N. Y.	20.5	21.5	22.0		32.0	611
Cincinnati, O.	14.5	15.5	14.0		18.0	313.3
Circleville, O.	16.5	17.5	20.0		25.0	384.2
Detroit, Mich.	14.5	15.5	16.0		22.0	380.1
Indianapolis, Ind.	13.5	14.5	12.0		17.0	203.6

TO : Boston, Mass. (Domestic)	30.0	28.0	30.0		40.0	1083
Boston, Mass. (Export)	19.5	17.5	19.5		29.5	1083
Portland, Me. (Domestic)	30.0	28.0	30.0		40.0	1155
Portland, Me. (Export)	19.5	17.5	19.5		29.5	1155
TRUNK LINE TERRITORY						
TO : Philadelphia, Pa. (Domestic)	26.0	24.0	26.0		36.0	908
Philadelphia, Pa. (Export)	18.5	16.5	18.5		28.5	908
New York, N. Y. (Domestic)	28.0	26.0	28.0		38.0	988
New York, N. Y.	19.5	17.5	19.5		29.5	988
VIRGINIA CITIES TERRITORY						
TO : Baltimore, Md. (Domestic)	25.0	23.0	25.0		35.0	843
Baltimore, Md. (Export)	18.0	16.0	18.0		28.0	843
Norfolk, Va. (Domestic)	25.0	23.0	25.0		35.0	972
Norfolk, Va (Export)	18.0	16.0	18.0		28.0	972

FROM ST. LOUIS, MISSOURI

SEPARATELY PUBLISHED RATE FACTORS APPLICABLE FROM BEYOND

C.F.A. TERRITORY	TRANS-MISSISSIPPI RIVER	NORTHWEST	RESHIPPING	PROPORTIONAL (Note 25 - 535-A)	LOCAL	MILEAGE
TO : Buffalo, N. Y.				24.0	32.0	702.6
Cincinnati, O.				15.5	19.0	338.7
Circleville, O.				18.5	22.0	420.6
Detroit, Mich.				16.0	22.0	475.3
Indianapolis, Ind.				13.0	17.0	239.4
Louisville, Ky.				14.0	19.0	263.6
Pittsburgh, Pa.				24.0	32.0	603.6
Toledo, O.				16.0	22.0	431.2

FROM ST. LOUIS, MISSOURI

SEPARATELY PUBLISHED RATE FACTORS APPLICABLE FROM BEYOND

	TRANS-MISSISSIPPI RIVER	NORTHWEST	RESHIPPING	PROPORTIONAL (Note 50 - 245 P & C)	LOCAL	MILEAGE
NEW ENGLAND TERRITORY						
TO : Boston, Mass. (Domestic)				32.0	40.0	1174
Boston, Mass. (Export)				21.5	29.5	1174
Portland, Me. (Domestic)				32.0	40.0	1246
Portland, Me. (Export)				21.5	29.5	1246
TRUNK LINE TERRITORY						
TO : New York, N. Y. (Domestic)				30.0	38.0	1040
New York, N. Y. (Export)				21.5	29.5	1040
Philadelphia, Pa. (Domestic)				28.0	36.0	960
Philadelphia, Pa. (Export)				20.5	28.5	960
VIRGINIA CITIES TERRITORY						
TO : Baltimore, Md. (Domestic)				27.0	35.0	896
Baltimore, Md. (Export)				20.0	28.0	896
Norfolk, Va. (Domestic)				27.0	35.0	997
Norfolk, Va. (Export)				20.0	28.0	997

EXHIBIT NO. 69
WITNESS J. J. Schimmel

SCHEDULE OF RATES APPLYING ON GRAIN FROM ILLINOIS & MISSOURI RIVER ORIGINS COMPARING INDEPENDENT BARGE-RAIL AS AT PRESENT AND PROPOSED WITH THE ALL-RAIL RATES TO VARIOUS DESTINATIONS SHOWN IN CENTRAL FREIGHT ASSOCIATION, NEW ENGLAND, TRUNK LINE AND VIRGINIA CITIES TERRITORIES

RATES IN CENTS PER HUNDRED POUNDS

FROM MORRIS AND SENECA, ILLINOIS

TO	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)		PROPOSED BARGE-RAIL (NOTE A)		ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
(Buffalo, N. Y.	M 555.7	Barge to Chicago	3.75	Barge to Chicago	3.75	M 559.3	I.P.Rail to Chicago	9.5	
(	S 566	Rail beyond Chicago	21.5 NW Propl.	Rail beyond Chicago	28.5 Local	S 569.5	Rail beyond Chicago	20.0	Reshipping
(Pittsburgh, Pa.	M 501.7		25.25 Thru		32.25 Thru	M 515.3		29.5	Thru
(	S 522					S 525.5			
More or less than all-rail			4.25 Less		2.75 More				
Cincinnati, O.	M 339.9	Barge to Chicago	3.75	Barge to Chicago	3.75	M 343.5	I.P.Rail to Chicago	9.5	
	S 350.2	Rail beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	20.5 Local	S 353.7	Rail beyond Chicago	13.5	Reshipping
			19.25 Thru		24.25 Thru			23.0	Thru
More or less than all-rail			3.75 Less		1.25 More				
Circleville, O.	M 378.4	Barge to Chicago	3.75	Barge to Chicago	3.75	M 382	I.P.Rail to Chicago	9.5	
	S 388.7	Rail beyond Chicago	17.5 NW Propl.	Rail beyond Chicago	26.0 Local	S 392.2	Rail beyond Chicago	19.0	Reshipping
			21.25 Thru		28.75 Thru			28.5	Thru
More or less than all-rail			7.25 Less		.25 More				
Detroit, Mich.	M 324.2	Barge to Chicago	3.75	Barge to Chicago	3.75	M 327.8	I.P.Rail to Chicago	9.5	
	S 334.5	Rail beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	17.0 Local	S 338	Rail beyond Chicago	15.0	Reshipping
			19.25 Thru		20.75 Thru			24.5	Thru
More or less than all-rail			5.25 Less		3.75 Less				
Indianapolis, Ind.	M 238.6	Barge to Chicago	3.75	Barge to Chicago	3.75	M 242.2	I.P.Rail to Chicago	9.5	
	S 248.9	Rail beyond Chicago	14.5 NW Propl.	Rail beyond Chicago	17.0 Local	S 252.4	Rail beyond Chicago	12.0	Reshipping
			18.25 Thru		20.75 Thru			21.5	Thru
more or less than all-rail			3.25 Less		.75 Less				
Louisville, Ky.	M 348.6	Barge to Chicago	3.75	Barge to Chicago	3.75	M 352.2	I.P.Rail to Chicago	9.5	
	S 358.9	Rail beyond Chicago	17.5 NW Propl.	Rail beyond Chicago	22.0 Local	S 362.4	Rail beyond Chicago	12.5	Transit Balance
			21.25 Thru		25.75 Thru			22.0	Thru
More or less than all-rail			.75 Less		3.75 More				
Toledo, O.	M 286.9	Barge to Chicago	3.75	Barge to Chicago	3.75	M 290.4	I.P.Rail to Chicago	9.5	
	S 297.1	Rail beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	17.0 Local	S 300.6	Rail beyond Chicago	15.0	Reshipping
			19.25 Thru		20.75 Thru			24.5	Thru
More or less than all-rail			5.25 Less		3.75 Less				
(Boston, Mass.)	M 1029.7	Barge to Chicago	3.75	Barge to Chicago	3.75	M 1033.3	I.P.Rail to Chicago	9.5	
( ) DOMESTIC	S 1040	Rail beyond Chicago	28.0 Reshipping	Rail beyond Chicago	36.5 Local	S 1043.5	Rail beyond Chicago	28.0	Reshipping
(Portland, Me.)	M 1101.7		31.75 Thru		40.25 Thru	M 1105.3		37.5	Thru
( )	S 1112					S 1116.5			
More or less than all-rail			6.75 Less		2.75 More				
(Boston, Mass.)	M 1029.7	Barge to Chicago	3.75	Barge to Chicago	3.75	M 1033.3	I.P.Rail to Chicago	9.5	
( ) EXPORT	S 1040	Rail beyond Chicago	17.5 Reshipping	Rail beyond Chicago	26.0 Local	S 1043.5	Rail beyond Chicago	17.5	Reshipping
(Portland, Me.)	M 1101.7		21.25 Thru		28.75 Thru	M 1105.3		27.0	Thru
( )	S 1112					S 1116.5			
More or less than all-rail			6.75 Less		2.75 More				
Philadelphia, Pa. (DOMESTIC)	M 867.7	Barge to Chicago	3.75	Barge to Chicago	3.75	M 871.3	I.P.Rail to Chicago	9.5	
	S 878	Rail beyond Chicago	24.0 Reshipping	Rail beyond Chicago	32.5 Local	S 881.5	Rail beyond Chicago	24.0	Reshipping
			27.75 Thru		36.25 Thru			33.5	Thru
More or less than all-rail			5.75 Less		2.75 More				
Philadelphia, Pa. (EXPORT)	M 867.7	Barge to Chicago	3.75	Barge to Chicago	3.75	M 871.3	I.P.Rail to Chicago	9.5	
	S 878	Rail beyond Chicago	16.5 Reshipping	Rail beyond Chicago	25.0 Local	S 881.5	Rail beyond Chicago	16.5	Reshipping
			20.25 Thru		28.75 Thru			26.0	Thru
More or less than all-rail			5.75 Less		2.75 More				
New York, N. Y. (DOMESTIC)	M 947.7	Barge to Chicago	3.75	Barge to Chicago	3.75	M 951.3	I.P.Rail to Chicago	9.5	
	S 958	Rail beyond Chicago	22.0 Reshipping	Rail beyond Chicago	34.5 Local	S 961.5	Rail beyond Chicago	26.0	Reshipping
			25.75 Thru		34.25 Thru			35.5	Thru
More or less than all-rail			5.75 Less		2.75 More				

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EXHIBIT NO.
WITNESS J. J. Schimmel

FROM MORRIS AND SENECA, ILLINOIS

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)		PROPOSED BARGE-RAIL (NOTE A)		ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
TO : New York, N. Y. (EXPORT)	M 947.7 S 958	Barge to Chicago 3.75 Rail beyond Chicago 17.5 Reshipping 21.25 Thru 5.75 Less		Barge to Chicago 3.75 Rail beyond Chicago 24.0 Local 28.75 Thru 2.75 More		M 951.3 S 961.5	I.P.Rail to Chicago 9.5 Rail beyond Chicago 17.5 27.0	Reshipping Thru
More or less than all-rail								
(Baltimore, Md.) (DOMESTIC)	M 838.7 S 829	Barge to Chicago 3.75 Rail beyond Chicago 23.0 Reshipping 26.75 Thru		Barge to Chicago 3.75 Rail beyond Chicago 31.5 Local 35.25 Thru		M 822.3 S 832.5	I.P.Rail to Chicago 9.5 Rail beyond Chicago 23.0 32.5	Reshipping Thru
(Norfolk, Va.)	M 971.7 S 982					M 975.3 S 985.5		
More or less than all-rail		6.75 Less		2.75 More				
(Baltimore, Md.) (EXPORT)	M 838.7 S 829	Barge to Chicago 3.75 Rail beyond Chicago 10.0 Reshipping 13.75 Thru		Barge to Chicago 3.75 Rail beyond Chicago 24.5 Local 28.25 Thru		M 822.3 S 832.5	I.P.Rail to Chicago 9.5 Rail beyond Chicago 16.0 25.5	Reshipping Thru
(Norfolk, Va.)	M 971.7 S 982					M 975.3 S 985.5		
More or less than all-rail		6.75 Less		2.75 More				

- FROM OTTAWA, ILLINOIS -

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)		PROPOSED BARGE-RAIL (NOTE A)		ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
TO : Buffalo, N. Y.) Pittsburgh, Pa.)	579.6 535.6	Barge to Chicago 3.375 Rail beyond Chicago 21.5 NW Propl. 24.875 Thru 5.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 28.5 Local 31.875 Thru 1.875 More		582.2 538.1	I.P.Rail to Chicago 10 Rail beyond Chicago 20 30	Reshipping Thru
More or less than all-rail								
Cincinnati, O.	363.8	Barge to Chicago 3.375 Rail beyond Chicago 15.5 NW Propl. 18.875 Thru 3.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 20.5 Local 23.875 Thru 1.875 More		366.3	I.P.Rail to Chicago 10 Rail beyond Chicago 12 22	Transit Balance Thru
More or less than all-rail								
Circleville, O.	402.3	Barge to Chicago 3.375 Rail beyond Chicago 17.5 NW Propl. 20.875 Thru 8.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 25.0 Local 28.375 Thru .625 Less		404.8	I.P.Rail to Chicago 10 Rail beyond Chicago 19 29	Reshipping Thru
More or less than all-rail								
Detroit, Mich.	348.1	Barge to Chicago 3.375 Rail beyond Chicago 15.5 NW Propl. 18.875 Thru 6.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 17.0 Local 20.375 Thru 4.625 Less		350.6	I.P.Rail to Chicago 10 Rail beyond Chicago 15 25	Reshipping Thru
More or less than all-rail								
Indianapolis, Ind.	262.5	Barge to Chicago 3.375 Rail beyond Chicago 14.5 NW Propl. 17.875 Thru 2.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 17.0 Local 20.375 Thru .375 More		265	I.P.Rail to Chicago 10 Rail beyond Chicago 10 20	Transit Balance Thru
More or less than all-rail								
Louisville, Ky.	372.5	Barge to Chicago 3.375 Rail beyond Chicago 17.5 NW Propl. 20.875 Thru 1.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 22.0 Local 25.375 Thru 3.375 More		375	I.P.Rail to Chicago 10 Rail beyond Chicago 12 22	Transit Balance Thru
More or less than all-rail								
Toledo, O.	310.7	Barge to Chicago 3.375 Rail beyond Chicago 15.5 NW Propl. 18.875 Thru 6.125 Less		Barge to Chicago 3.375 Rail beyond Chicago 17.0 Local 20.375 Thru 4.625 Less		313.2	I.P.Rail to Chicago 10 Rail beyond Chicago 15 25	Reshipping Thru
More or less than all-rail								
(Boston, Mass.) (DOMESTIC)	1053.6	Barge to Chicago 3.375 Rail beyond Chicago 28.0 Reshipping 31.875 Thru 6.625 Less		Barge to Chicago 3.375 Rail beyond Chicago 36.5 Local 39.875 Thru 1.875 More		1056.1	I.P.Rail to Chicago 10 Rail beyond Chicago 28 38	Reshipping Thru
(Portland, Me.)	1125.6					1126.1		
More or less than all-rail								

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FROM OTTAWA, ILLINOIS

TO	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
Boston, Mass.) EXPORT Portland, Me.)	1053.6 1125.6	Barge to Chicago Rail beyond Chicago	3.375 17.5 20.875 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 26.0 29.375 Thru 1.875 More	Local	1056.1 1128.1	I.P.Rail to Chicago Rail beyond Chicago	10 17.5 27.5	Reshipping Thru
More or less than all-rail											
Philadelphia, Pa. (DOMESTIC)	891.6	Barge to Chicago Rail beyond Chicago	3.375 24.0 27.375 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 32.5 35.875 Thru 1.875 More	Local	894.1	I.P.Rail to Chicago Rail beyond Chicago	10 24 34	Reshipping Thru
More or less than all-rail											
Philadelphia, Pa. (EXPORT)	891.6	Barge to Chicago Rail beyond Chicago	3.375 16.5 19.875 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 25.0 28.375 Thru 1.875 More	Local	894.1	I.P.Rail to Chicago Rail beyond Chicago	10 16.5 26.5	Reshipping Thru
More or less than all-rail											
New York, N. Y. (DOMESTIC)	971.6	Barge to Chicago Rail beyond Chicago	3.375 26.0 29.375 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 34.5 37.875 Thru 1.875 More	Local	974.1	I.P.Rail to Chicago Rail beyond Chicago	10 26 36	Reshipping Thru
More or less than all-rail											
New York, N. Y. (EXPORT)	971.6	Barge to Chicago Rail beyond Chicago	3.375 17.5 20.875 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 26.0 29.375 Thru 1.875 More	Local	974.1	I.P.Rail to Chicago Rail beyond Chicago	10 17.5 27.5	Reshipping Thru
More or less than all-rail											
Baltimore, Md.) DOMESTIC Norfolk, Va.)	842.6 995.6	Barge to Chicago Rail beyond Chicago	3.375 23.0 26.375 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 31.5 34.875 Thru 1.875 More	Local	845.6 998.1	I.P.Rail to Chicago Rail beyond Chicago	10 23 33	Reshipping Thru
More or less than all-rail											
Baltimore, Md.) EXPORT Norfolk, Va.)	842.6 995.6	Barge to Chicago Rail beyond Chicago	3.375 16.0 19.375 Thru 6.625 Less	Reshipping	Barge to Chicago Rail beyond Chicago	3.375 24.5 27.875 Thru 1.875 More	Local	845.6 998.1	I.P.Rail to Chicago Rail beyond Chicago	10 16 26	Reshipping Thru
More or less than all-rail											

- - FROM LASALLE, ILLINOIS - -

TO	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
Buffalo, N. Y.) Pittsburgh, Pa.)	594.9 550.9	Barge to Chicago Rail beyond Chicago	3.30 21.5 24.80 Thru 7.20 Less	NW Propl.	Barge to Chicago Rail beyond Chicago	3.30 28.5 31.80 Thru .20 Less	Local	596.5 552.5	I.P.Rail to Chicago Rail beyond Chicago	12 20 32	Reshipping Thru
More or less than all-rail											
Cincinnati, O.	379.1	Barge to Chicago Rail beyond Chicago	3.30 15.5 18.80 Thru 3.20 Less	NW Propl.	Barge to Chicago Rail beyond Chicago	3.30 20.5 23.80 Thru 1.80 More	Local	380.7	I.P.Rail to Chicago Rail beyond Chicago	12 10 22	Transit Balance Thru
More or less than all-rail											
Circleville, O.	417.6	Barge to Chicago Rail beyond Chicago	3.30 17.5 20.80 Thru 8.20 Less	NW Propl.	Barge to Chicago Rail beyond Chicago	3.30 26.0 28.30 Thru .70 Less	Local	419.2	I.P.Rail to Chicago Rail beyond Chicago	12 17 29	Transit Balance Thru 6th Class
More or less than all-rail											
Detroit, Mich.	363.4	Barge to Chicago Rail beyond Chicago	3.30 15.5 18.80 Thru 8.20 Less	NW Propl.	Barge to Chicago Rail beyond Chicago	3.30 17.0 20.30 Thru 6.70 Less	Local	365	I.P.Rail to Chicago Rail beyond Chicago	12 15 27	Reshipping Thru
More or less than all-rail											
Indianapolis, Ind.	277.8	Barge to Chicago Rail beyond Chicago	3.30 14.5 17.80 Thru 1.20 Less	NW Propl.	Barge to Chicago Rail beyond Chicago	3.30 17.0 20.30 Thru 1.30 More	Local	279.4	I.P.Rail to Chicago Rail beyond Chicago	12 7 19	Transit Balance Thru
More or less than all-rail											

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FROM LASALLE, ILLINOIS

DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
337.8	Barge to Chicago	3.30		Barge to Chicago	3.30		389.4	I.P.Rail to Chicago	12	
	Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	22.0	Local		Rail beyond Chicago	10	Transit Balance
		20.80	Thru		25.30	Thru			22	Thru
		1.20	Less		3.30	More				
326	Barge to Chicago	3.30		Barge to Chicago	3.30		327.6	I.P.Rail to Chicago	12	
	Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	15	Reshipping
		18.80	Thru		20.30	Thru			27	Thru
		8.20	Less		6.70	Less				
1068.9	Barge to Chicago	3.30		Barge to Chicago	3.30		1070.5	I.P.Rail to Chicago	12	
1140.9	Rail beyond Chicago	28.0	Reshipping	Rail beyond Chicago	36.5	Local	1142.5	Rail beyond Chicago	28	Reshipping
		31.30	Thru		39.80	Thru			40	Thru
		8.70	Less		.20	Less				
1068.9	Barge to Chicago	3.30		Barge to Chicago	3.30		1070.5	I.P.Rail to Chicago	12	
1140.9	Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local	1142.5	Rail beyond Chicago	17.5	Reshipping
		20.80	Thru		29.30	Thru			29.5	Thru
		8.70	Less		.20	Less				
906.9	Barge to Chicago	3.30		Barge to Chicago	3.30		908.5	I.P.Rail to Chicago	12	
	Rail beyond Chicago	24.0	Reshipping	Rail beyond Chicago	32.5	Local		Rail beyond Chicago	24	Reshipping
		27.30	Thru		35.80	Thru			38	Thru
		8.70	Less		.20	Less				
906.9	Barge to Chicago	3.30		Barge to Chicago	3.30		908.5	I.P.Rail to Chicago	12	
	Rail beyond Chicago	16.5	Reshipping	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	16.5	Reshipping
		19.80	Thru		28.30	Thru			28.5	Thru
		8.70	Less		.20	Less				
986.9	Barge to Chicago	3.30		Barge to Chicago	3.30		988.5	I.P.Rail to Chicago	12	
	Rail beyond Chicago	26.0	Reshipping	Rail beyond Chicago	34.5	Local		Rail beyond Chicago	26	Reshipping
		29.30	Thru		37.80	Thru			38	Thru
		8.70	Less		.20	Less				
986.9	Barge to Chicago	3.30		Barge to Chicago	3.30		988.5	I.P.Rail to Chicago	12	
	Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local		Rail beyond Chicago	17.5	Reshipping
		20.80	Thru		29.30	Thru			29.5	Thru
		8.70	Less		.20	Less				
867.9	Barge to Chicago	3.30		Barge to Chicago	3.30		859.5	I.P.Rail to Chicago	12	
1010.9	Rail beyond Chicago	23.0	Reshipping	Rail beyond Chicago	31.5	Local	1012.5	Rail beyond Chicago	23	Reshipping
		26.30	Thru		34.80	Thru			35	Thru
		8.70	Less		.20	Less				
867.9	Barge to Chicago	3.30		Barge to Chicago	3.30		859.5	I.P.Rail to Chicago	12	
1010.9	Rail beyond Chicago	16.0	Reshipping	Rail beyond Chicago	24.5	Local	1012.5	Rail beyond Chicago	16	Reshipping
		19.30	Thru		27.80	Thru			28	Thru
		8.70	Less		.20	Less				

- - FROM HENRY AND CHILLICOTHE, ILLINOIS - -

DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
H 623.4	Barge to Chicago	4.125		Barge to Chicago	4.125		H 625.2	I.P.Rail to Chicago	12	
C 638	Rail beyond Chicago	21.5	NW Propl.	Rail beyond Chicago	28.5	Local	C 640.2	Rail beyond Chicago	20	Reshipping
H 579.4		25.625	Thru		32.625	Thru	H 581.2		32	Thru
C 594							C 596.2			
		6.375	Less		.625	More				
H 407.6	Barge to Chicago	4.125		Barge to Chicago	4.125		H 409.4	I.P.Rail to Chicago	12	
C 422.2	Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	20.5	Local	C 424.4	Rail beyond Chicago	13.5	Reshipping
		19.625	Thru		24.625	Thru			25.5	Thru
		5.875	Less		.875	Less				

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FROM HENRY AND CHILLICOTHE, ILLINOIS

TO			DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)		PROPOSED BARGE-RAIL (NOTE A)		ALL RAIL DISTANCE	ALL RAIL	
Boston, Mass.)		H	1097.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 1099.2	I.P.Rail to Chicago	12
)	EXPORT	C	1112	Rail beyond Chicago	17.5 Reshipping	Rail beyond Chicago	26.0 Local	C 1114.2	Rail beyond Chicago	17.5 Reshipping
Portland, Me.)		H	1169.4		21.625 Thru		30.125 Thru	H 1171.2		29.5 Thru
)		C	1184					C 1186.2		
More or less than all-rail					7.875 Less		.625 More			
Philadelphia, Pa.	(DOMESTIC)	H	935.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 937.2	I.P.Rail to Chicago	12
		C	950	Rail beyond Chicago	24.0 Reshipping	Rail beyond Chicago	32.5 Local	C 952.2	Rail beyond Chicago	24 Reshipping
					28.125 Thru		36.625 Thru			36 Thru
More or less than all-rail					7.875 Less		.625 More			
Philadelphia, Pa.	(EXPORT)	H	935.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 937.2	I.P.Rail to Chicago	12
		C	950	Rail beyond Chicago	16.5 Reshipping	Rail beyond Chicago	25.0 Local	C 952.2	Rail beyond Chicago	16.5 Reshipping
					20.625 Thru		29.125 Thru			28.5 Thru
More or less than all-rail					7.875 Less		.625 More			
New York, N. Y.	(DOMESTIC)	H	1015.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 1017.2	I.P.Rail to Chicago	12
		C	1030	Rail beyond Chicago	26.0 Reshipping	Rail beyond Chicago	34.5 Local	C 1032.2	Rail beyond Chicago	26 Reshipping
					30.125 Thru		38.625 Thru			38 Thru
More or less than all-rail					7.875 Less		.625 More			
New York, N. Y.	(EXPORT)	H	1015.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 1017.2	I.P.Rail to Chicago	12
		C	1030	Rail beyond Chicago	17.5 Reshipping	Rail beyond Chicago	26.0 Local	C 1032.2	Rail beyond Chicago	17.5 Reshipping
					21.625 Thru		30.125 Thru			29.5 Thru
More or less than all-rail					7.875 Less		.625 More			
Baltimore, Md.)		H	886.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 888.2	I.P.Rail to Chicago	12
)	DOMESTIC	C	901	Rail beyond Chicago	23.0 Reshipping	Rail beyond Chicago	31.5 Local	C 903.2	Rail beyond Chicago	23 Reshipping
Norfolk, Va.)		H	1039.4		27.125 Thru		35.625 Thru	H 1041.2		35 Thru
)		C	1054					C 1056.2		
More or less than all-rail					7.875 Less		.625 More			
Baltimore, Md.)		H	886.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 888.2	I.P.Rail to Chicago	12
)	EXPORT	C	901	Rail beyond Chicago	16.0 Reshipping	Rail beyond Chicago	24.5 Local	C 903.2	Rail beyond Chicago	16 Reshipping
Norfolk, Va.)		H	1039.4		20.125 Thru		28.625 Thru	H 1041.2		28 Thru
)		C	1054					C 1056.2		
More or less than all-rail					7.875 Less		.625 More			
Circleville, O.		H	446.1	Barge to Chicago	4.125	Barge to Chicago	4.125	H 447.9	I.P.Rail to Chicago	12
		C	460.7	Rail beyond Chicago	17.5 NW Propl.	Rail beyond Chicago	25.0 Local	C 462.9	Rail beyond Chicago	19 Reshipping
					21.625 Thru		29.125 Thru			31 Thru
More or less than all-rail					9.375 Less		1.875 Less			
Detroit, Mich.		H	391.9	Barge to Chicago	4.125	Barge to Chicago	4.125	H 393.7	I.P.Rail to Chicago	12
		C	406.5	Rail beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	17.0 Local	C 408.7	Rail beyond Chicago	15 Reshipping
					19.625 Thru		21.125 Thru			27 Thru
More or less than all-rail					7.375 Less		5.875 Less			
Indianapolis, Ind.		H	306.3	Barge to Chicago	4.125	Barge to Chicago	4.125	H 308.1	I.P.Rail to Chicago	12
		C	320.9	Rail beyond Chicago	14.5 NW Propl.	Rail beyond Chicago	17.0 Local	C 323.1	Rail beyond Chicago	12 Reshipping
					18.625 Thru		21.125 Thru			24 Thru
More or less than all-rail					5.375 Less		2.875 Less			
Louisville, Ky.		H	418.3	Barge to Chicago	4.125	Barge to Chicago	4.125	H 418.1	I.P.Rail to Chicago	12
		C	430.9	Rail beyond Chicago	17.5 NW Propol.	Rail beyond Chicago	22.0 Local	C 433.1	Rail beyond Chicago	15 Reshipping
					21.625 Thru		26.125 Thru			27 Thru
More or less than all rail					5.375 Less		.875 Less			
Toledo, O.		H	364.5	Barge to Chicago	4.125	Barge to Chicago	4.125	H 366.3	I.P.Rail to Chicago	12
		C	369.1	Rail beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	17.0 Local	C 371.3	Rail beyond Chicago	15 Reshipping
					19.625 Thru		21.125 Thru			27 Thru
More or less than all-rail					7.375 Less		5.875 Less			
Boston, Mass.)		H	1097.4	Barge to Chicago	4.125	Barge to Chicago	4.125	H 1099.2	I.P.Rail to Chicago	12
)	DOMESTIC	C	1112	Rail beyond Chicago	28.0 Reshipping	Rail beyond Chicago	36.5 Local	C 1114.2	Rail beyond Chicago	28 Reshipping
Portland, Me.)		H	1169.4		32.125 Thru		40.625 Thru	H 1171.2		40 Thru
)		C	1184					C 1186.2		
More or less than all-rail					7.875 Less		.625 More			

- - FROM LACON, ILLINOIS - -

		DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
TO	Buffalo, N. Y.)	629.9	Barge to Chicago	4.125		Barge to Chicago	4.125		626.6	I.P.Rail to Chicago	12	
	Pittsburgh, Pa.)	585.9	Rail beyond Chicago	21.5	NW Propl.	Rail beyond Chicago	28.5	Local	682.5	Rail beyond Chicago	20	Reshipping
				25.625	Thru		32.625	Thru			32	Thru
	More or less than all-rail			6.375	Less		.625	More				
	Cincinnati, O.	414.1	Barge to Chicago	4.125		Barge to Chicago	4.125		410.7	I.P.Rail to Chicago	12	
			Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	20.5	Local		Rail beyond Chicago	13.5	Reshipping
				19.625	Thru		24.625	Thru			25.5	Thru
	More or less than all-rail			5.875	Less		.875	Less				
	Circleville, O.	452.6	Barge to Chicago	4.125		Barge to Chicago	4.125		449.7	I.P.Rail to Chicago	12	
			Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	18	Transit Balance
				21.625	thru		29.125	Thru			30	Thru 6th Class
	More or less than all-rail			8.375	Less		.875	Less				
	Detroit, Mich.	396.4	Barge to Chicago	4.125		Barge to Chicago	4.125		395	I.P.Rail to Chicago	12	
			Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	10	Transit Balance
				19.625	Thru		21.125	Thru			22	Thru
	More or less than all-rail			2.375	Less		.875	Less				
TO	Indianapolis, Ind.	312.8	Barge to Chicago	4.125		Barge to Chicago	4.125		309.4	I.P.Rail to Chicago	12	
			Rail beyond Chicago	14.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	12	Reshipping
				18.625	Thru		21.125	Thru			24	Thru
	More or less than all-rail			5.375	Less		2.875	Less				
	Louisville, Ky.	422.8	Barge to Chicago	4.125		Barge to Chicago	4.125		419.4	I.P.Rail to Chicago	12	
			Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	22.0	Local		Rail beyond Chicago	15	Reshipping
				21.625	Thru		26.125	Thru			27	Thru
	More or less than all-rail			5.375	Less		.875	Less				
	Toledo, O.	361	Barge to Chicago	4.125		Barge to Chicago	4.125		357.6	I.P.Rail to Chicago	12	
			Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	10	Transit Balance
				19.625	Thru		21.125	Thru			22	Thru
	More or less than all-rail			2.375	Less		.875	Less				
	Boston, Mass.) DOMESTIC	1103.9	Barge to Chicago	4.125		Barge to Chicago	4.125		1100.5	I.P.Rail to Chicago	12	
	Portland, Me.)	1175.9	Rail beyond Chicago	28.0	Reshipping	Rail beyond Chicago	36.5	Local	1172.5	Rail beyond Chicago	28	Reshipping
				32.125	Thru		40.625	Thru			40	Thru
	More or less than all-rail			7.875	Less		.625	More				
	Boston, Mass.) EXPORT	1103.9	Barge to Chicago	4.125		Barge to Chicago	4.125		1100.5	I.P.Rail to Chicago	12	
	Portland, Me.)		Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local	1172.5	Rail beyond Chicago	17.5	Reshipping
				21.625	Thru		30.125	Thru			29.5	Thru
	More or less than all-rail			7.875	Less		.625	More				
	Philadelphia, Pa.(DOMESTIC)	941.9	Barge to Chicago	4.125		Barge to Chicago	4.125		938.5	I.P.Rail to Chicago	12	
			Rail beyond Chicago	24.0	Reshipping	Rail beyond Chicago	32.5	Local		Rail beyond Chicago	24	Reshipping
				28.125	Thru		36.625	Thru			36	Thru
	More or less than all-rail			7.875	Less		.625	More				
	Philadelphia, Pa. (EXPORT)	941.9	Barge to Chicago	4.125		Barge to Chicago	4.125		938.5	I.P.Rail to Chicago	12	
			Rail beyond Chicago	16.5	Reshipping	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	16.5	Reshipping
				20.625	Thru		29.125	Thru			28.5	Thru
	More or less than all-rail			7.875	Less		.625	More				
	New York, N. Y. (DOMESTIC)	1021.9	Barge to Chicago	4.125		Barge to Chicago	4.125		1018.5	I.P.Rail to Chicago	12	
			Rail beyond Chicago	26.0	Reshipping	Rail beyond Chicago	34.5	Local		Rail beyond Chicago	26	Reshipping
				30.125	Thru		38.625	Thru			38	Thru
	More or less than all-rail			7.875	Less		.625	More				
	New York, N. Y. (EXPORT)	1021.9	Barge to Chicago	4.125		Barge to Chicago	4.125		1018.5	I.P.Rail to Chicago	12	
			Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local		Rail beyond Chicago	17.5	Reshipping
				21.625	Thru		30.125	Thru			29.5	Thru
	More or less than all-rail			7.875	Less		.625	More				

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FROM LACON, ILLINOIS

		DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
Baltimore, Md. / Norfolk, Va.	DOMESTIC	892.9 1045.9	Barge to Chicago Rail beyond Chicago	4.125 23.0 27.125	Reshipping Thru	Barge to Chicago Rail beyond Chicago	4.125 31.5 35.625	Local Thru	889.5 1042.5	I.P.Rail to Chicago Rail beyond Chicago	12 23 35	Reshipping Thru
More or less than all-rail				7.875	Less		.625	More				
Baltimore, Md. / Norfolk, Va.	EXPORT	892.9 1045.9	Barge to Chicago Rail beyond Chicago	4.125 16.0 20.125	Reshipping Thru	Barge to Chicago Rail beyond Chicago	4.125 24.5 28.625	Local Thru	889.5 1042.5	I.P.Rail to Chicago Rail beyond Chicago	12 16 28	Reshipping Thru
More or less than all-rail				7.875	Less		.625	More				

FROM PEORIA AND PEKIN, ILLINOIS

TO		DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
Baltimore, Md. / Norfolk, Va.	DOMESTIC	P 919.4 Px 929.2 P 1072.4 Px 1082.2	Barge to Chicago Rail beyond Chicago	4.625 23.0 27.625	Reshipping Thru	Barge to Chicago Rail beyond Chicago	4.625 31.5 36.125	Local Thru	P 921.6 Px 930.9 P 1074.6 Px 1083.9	I.P.Rail to Chicago Rail beyond Chicago	12 23 35	Reshipping Thru
More or less than all-rail				7.375	Less		1.125	More				
Baltimore, Md. / Norfolk, Va.	EXPORT	P 919.4 Px 929.2 P 1072.4 Px 1082.2	Barge to Chicago Rail beyond Chicago	4.625 16.0 20.625	Reshipping Thru	Barge to Chicago Rail beyond Chicago	4.625 24.5 29.125	Local Thru	P 921.6 Px 930.9 P 1074.6 Px 1083.9	I.P.Rail to Chicago Rail beyond Chicago	12 16 28	Reshipping Thru
More or less than all-rail				7.375	Less		1.125	More				
Buffalo, N. Y. / Pittsburgh, Pa.	P 656.4 Px 666.2 P 612.4 Px 622.2	Barge to Chicago Rail beyond Chicago	4.625 21.5 26.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 28.6 33.125	Local Thru	P 658.6 Px 667.9 P 614.6 Px 623.9	I.P.Rail to Chicago Rail beyond Chicago	12 20 32	Reshipping Thru
More or less than all-rail				5.875	Less		1.125	More				
Cincinnati, O.	P 440.6 Px 450.4	Barge to Chicago Rail beyond Chicago	4.625 15.5 20.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 20.5 25.125	Local Thru	P 442.8 Px 452.1	I.P.Rail to Chicago Rail beyond Chicago	12 13.5 26.5	Reshipping Thru
More or less than all-rail				5.375	Less		.375	Less				
Circleville, O.	P 479.1 Px 488.9	Barge to Chicago Rail beyond Chicago	4.625 17.5 22.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 25.0 29.625	Local Thru	P 481.3 Px 490.6	I.P.Rail to Chicago Rail beyond Chicago	12 18 30	Transit Balance Thru 6th Class
More or less than all-rail				7.875	Less		.375	Less				
Detroit, Mich.	P 424.9 Px 434.7	Barge to Chicago Rail beyond Chicago	4.625 15.5 20.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 17.0 21.625	Local Thru	P 427.1 Px 436.4	I.P.Rail to Chicago Rail beyond Chicago	12 15 27	Reshipping Thru
More or less than all-rail				6.875	Less		5.375	Less				
Indianapolis, Ind.	P 339.3 Px 349.1	Barge to Chicago Rail beyond Chicago	4.625 14.5 19.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 17.0 21.625	Local Thru	P 341.5 Px 350.8	I.P.Rail to Chicago Rail beyond Chicago	12 12 24	Reshipping Thru
More or less than all-rail				4.875	Less		2.375	Less				
Louisville, Ky.	P 449.3 Px 459.1	Barge to Chicago Rail beyond Chicago	4.625 17.5 22.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 22.0 26.625	Local Thru	P 451.5 Px 460.8	I.P.Rail to Chicago Rail beyond Chicago	12 15 27	Reshipping Thru
More or less than all-rail				4.875	Less		.375	Less				
Toledo, O.	P 387.5 Px 397.3	Barge to Chicago Rail beyond Chicago	4.625 15.5 20.125	NW Propl. Thru	Barge to Chicago Rail beyond Chicago	4.625 17.0 21.625	Local Thru	P 389.7 Px 399	I.P.Rail to Chicago Rail beyond Chicago	12 15 27	Reshipping Thru
More or less than all-rail				6.875	Less		5.375	Less				

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- - FROM PEORIA AND PEKIN, ILLINOIS - -

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
Boston, Mass. (DOMESTIC)	P 1130.4	Barge to Chicago	4.625		Barge to Chicago	4.625		P 1132.6	I.P.Rail to Chicago	12	
	Px 1140.2	Rail beyond Chicago	28.0	Reshipping	Rail beyond Chicago	36.5	Local	Px 1141.9	Rail beyond Chicago	28	Reshipping
PORTLAND, Me.	P 1202.4		32.625	Thru		41.125	Thru	P 1204.6		40	Thru
	Px 1212.2							Px 1213.9			
More or less than all-rail			7.375	Less		1.125	More				
Boston, Mass. (EXPORT)	P 1130.4	Barge to Chicago	4.625		Barge to Chicago	4.625		P 1132.6	I.P.Rail to Chicago	12	
	Px 1140.2	Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local	PX 1141.9	Rail beyond Chicago	17.5	Reshipping
Portland, Me.	P 1202.4		22.125	Thru		30.625	Thru	P 1204.6		29.5	Thru
	Px 1212.2							Px 1213.9			
More or less than all-rail			7.375	Less		1.125	More				
Philadelphia, Pa. (DOMESTIC)	P 968.4	Barge to Chicago	4.625		Barge to Chicago	4.625		P 970.6	I.P.Rail to Chicago	12	
	Px 978.2	Rail beyond Chicago	24.0	Reshipping	Rail beyond Chicago	32.5	Local	Px 979.9	Rail beyond Chicago	24	Reshipping
			28.625	Thru		37.125	Thru			36	Thru
More or less than all-rail			7.375	Less		1.125	More				
Philadelphia, Pa. (EXPORT)	P 968.4	Barge to Chicago	4.625		Barge to Chicago	4.625		P 970.6	I.P.Rail to Chicago	12	
	Px 978.2	Rail beyond Chicago	16.5	Reshipping	Rail beyond Chicago	25.0	Local	Px 979.9	Rail beyond Chicago	16.5	Reshipping
			21.125	Thru		29.625	Thru			28.5	Thru
More or less than all-rail			7.375	Less		1.125	More				
New York, N. Y. (DOMESTIC)	P 1048.4	Barge to Chicago	4.625		Barge to Chicago	4.625		P 1050.6	I.P.Rail to Chicago	12	
	Px 1058.2	Rail beyond Chicago	26.0	Reshipping	Rail beyond Chicago	34.5	Local	Px 1059.9	Rail beyond Chicago	26	Reshipping
			30.625	Thru		39.125	Thru			38	Thru
More or less than all-rail			7.375	Less		1.125	More				
New York, N. Y. (EXPORT)	P 1048.4	Barge to Chicago	4.625		Barge to Chicago	4.625		P 1050.6	I.P.Rail to Chicago	12	
	Px 1058.2	Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local	Px 1059.9	Rail beyond Chicago	17.5	Reshipping
			22.125	Thru		30.625	Thru			29.5	Thru
More or less than all-rail			7.375	Less		1.125	More				

- - FROM HAVANA, ILLINOIS - -

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
TO : Buffalo, N. Y.	698.9	Barge to Chicago	5.125		Barge to Chicago	5.125		698.8	I.P.Rail to Chicago	12	
Pittsburgh, Pa.	654.9	Rail beyond Chicago	21.5	NW Propl.	Rail beyond Chicago	28.5	Local	654.8	Rail beyond Chicago	20	Reshipping
			26.625	Thru		33.625	Thru			32	Thru
More or less than all-rail			5.375	Less		1.625	More				
Cincinnati, O.	483.1	Barge to Chicago	5.125		Barge to Chicago	5.125		483	I.P.Rail to Chicago	12	
		Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	20.5	Local		Rail beyond Chicago	13.5	Reshipping
			20.625	Thru		25.625	Thru			25.5	Thru
More or less than all-rail			4.875	Less		.125	More				
TO : Circleville, O.	521.6	Barge to Chicago	5.125		Barge to Chicago	5.125		521.5	I.P.Rail to Chicago	12	
		Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	19	Reshipping
			22.625	Thru		30.125	Thru			31	Thru
More or less than all-rail			9.375	Less		.875	Less				
Detroit, Mich.	467.4	Barge to Chicago	5.125		Barge to Chicago	5.125		467.3	I.P.Rail to Chicago	12	
		Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	15	Reshipping
			20.625	Thru		22.125	Thru			27	Thru
More or less than all-rail			6.375	Less		4.875	Less				
Indianapolis, Ind.	381.8	Barge to Chicago	5.125		Barge to Chicago	5.125		381.7	I.P.Rail to Chicago	12	
		Rail beyond Chicago	14.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	12	Reshipping
			19.625	Thru		22.125	Thru			24	Thru
More or less than all-rail			4.375	Less		1.875	Less				
Louisville, Ky.	491.8	Barge to Chicago	5.125		Barge to Chicago	5.125		491.7	I.P.Rail to Chicago	12	
		Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	22.0	Local		Rail beyond Chicago	15	Reshipping
			22.625	Thru		27.125	Thru			27	Thru
More or less than all-rail			4.375	Less		.125	More				

FROM HAVANA, ILLINOIS

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
	430	Barge to Chicago	5.125		Barge to Chicago	5.125		429.9	I.P.Rail to Chicago	12	
		Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	15	Reshipping
			20.625	Thru		22.125	Thru			27	Thru
all-rail			6.875	Less		4.875	Less				
ESTIC	1172.9	Barge to Chicago	5.125		Barge to Chicago	5.125		1172.8	I.P.Rail to Chicago	12	
	1244.9	Rail beyond Chicago	28.0	Reshipping	Rail beyond Chicago	36.5	Local	1244.8	Rail beyond Chicago	28	Reshipping
			33.125	Thru		41.625	Thru			40	Thru
all-rail			6.875	Less		1.625	More				
ORT	1172.9	Barge to Chicago	5.125		Barge to Chicago	5.125		1172.8	I.P.Rail to Chicago	12	
	1244.9	Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local	1244.8	Rail beyond Chicago	17.5	Reshipping
			22.625	Thru		31.125	Thru			29.5	Thru
all-rail			6.875	Less		1.625	More				
OMESTIC)	1010.9	Barge to Chicago	5.125		Barge to Chicago	5.125		1010.8	I.P.Rail to Chicago	12	
		Rail beyond Chicago	24.0	Reshipping	Rail beyond Chicago	32.5	Local		Rail beyond Chicago	24	Reshipping
			29.125	Thru		37.625	Thru			36	Thru
all-rail			6.875	Less		1.625	More				
(EXPORT)	1010.9	Barge to Chicago	5.125		Barge to Chicago	5.125		1010.8	I.P.Rail to Chicago	12	
		Rail beyond Chicago	16.5	Reshipping	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	16.5	Reshipping
			21.625	Thru		30.125	Thru			28.5	Thru
all-rail			6.875	Less		1.625	More				
OMESTIC)	1090.9	Barge to Chicago	5.125		Barge to Chicago	5.125		1090.8	I.P.Rail to Chicago	12	
		Rail beyond Chicago	26.0	Reshipping	Rail beyond Chicago	34.5	Local		Rail beyond Chicago	26	Reshipping
			31.125	Thru		39.625	Thru			38	Thru
all-rail			6.875	Less		1.625	More				
EXPORT)	1090.9	Barge to Chicago	5.125		Barge to Chicago	5.125		1090.8	I.P.Rail to Chicago	12	
		Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local		Rail beyond Chicago	17.5	Reshipping
			22.625	Thru		31.125	Thru			29.5	Thru
all-rail			6.875	Less		1.625	More				
MESTIC	961.9	Barge to Chicago	5.125		Barge to Chicago	5.125		961.8	I.P.Rail to Chicago	12	
	1114.9	Rail beyond Chicago	23.0	Reshipping	Rail beyond Chicago	31.5	Local	1114.8	Rail beyond Chicago	23	Reshipping
			28.125	Thru		36.625	Thru			35	Thru
all-rail			6.875	Less		1.625	More				
XPORT	961.9	Barge to Chicago	5.125		Barge to Chicago	5.125		961.8	I.P.Rail to Chicago	12	
	1114.9	Rail beyond Chicago	16.0	Reshipping	Rail beyond Chicago	24.5	Local	1114.8	Rail beyond Chicago	16	Reshipping
			21.125	Thru		29.625	Thru			28	Thru
all-rail			6.875	Less		1.625	Less				

FROM KANSAS CITY, MISSOURI

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)		
	1220.2	Barge to Chicago	11.375		Barge to Chicago	11.375		950	Rail to Chicago	16	Propl.
	1176.2	Rail beyond Chicago	21.5	NW Propl.	Rail beyond Chicago	28.5	Local	906	Rail beyond Chicago	18.5	T.M.
			32.875	Thru		39.875	Thru			34.5	Thru
all-rail			1.625	Less		5.375	More				
	1004.4	Barge to Chicago	11.375		Barge to Chicago	11.375		734.2	Rail to Chicago	16.0	Propl.
		Rail beyond Chicago	16.5	NW Propl.	Rail beyond Chicago	20.5	Local		Rail beyond Chicago	12.5	T.M.
			26.875	Thru		31.875	Thru			28.5	Thru
all-rail			1.625	Less		3.375	More				
	1042.9	Barge to Chicago	11.375		Barge to Chicago	11.375		772.7	Rail to Chicago	16.0	Propl.
		Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	14.5	T.M.
			28.875	Thru		36.375	Thru			30.5	Thru
all-rail			1.625	Less		1.375	More				

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FROM KANSAS CITY, MISSOURI

	DISTANCE BARGE-RAIL	PRESENT BARGE-RAIL (NOTE A)			PROPOSED BARGE-RAIL (NOTE A)			ALL RAIL DISTANCE	ALL RAIL (NOTE B)	
Detroit, Mich.	988.7	Barge to Chicago	11.375		Barge to Chicago	11.375		718.5	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	12.5 T.M.
			26.875	Thru		28.375	Thru			28.5 Thru
			1.625	Less		.125	Less			
More or less than all-rail										
Indianapolis, Ind.	903.1	Barge to Chicago	11.375		Barge to Chicago	11.375		632.9	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	14.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	11.5 T.M.
			27.875	Thru		28.375	Thru			27.5 Thru
			1.625	Less		.875	More			
More or less than all-rail										
Louisville, Ky.	1013.1	Barge to Chicago	11.375		Barge to Chicago	11.375		742.9	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	17.5	NW Propl.	Rail beyond Chicago	22.0	Local		Rail beyond Chicago	16.0 T.M.
			28.875	Thru		33.375	Thru			32.0 Thru
			3.125	Less		1.375	More			
More or less than all-rail										
Toledo, O.	951.3	Barge to Chicago	11.375		Barge to Chicago	11.375		681.1	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	15.5	NW Propl.	Rail beyond Chicago	17.0	Local		Rail beyond Chicago	12.5 T.M.
			26.875	Thru		28.375	Thru			28.5 Thru
			1.625	Less		.125	Less			
More or less than all-rail										
Boston, Mass.) DOMESTIC	1694.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1424	Rail to Chicago	16.0 Propl.
Portland, Me.)	1766.2	Rail beyond Chicago	28.0	Reshipping	Rail beyond Chicago	36.5	Local	1496	Rail beyond Chicago	28.0 Reshipping
			39.375	Thru		47.875	Thru			44.0 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
Boston, Mass.) EXPORT	1694.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1424	Rail to Chicago	16.0 Propl.
Portland, Me.)	1766.2	Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local	1496	Rail beyond Chicago	17.5 Reshipping
			28.875	Thru		37.375	Thru			33.5 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
Philadelphia, Pa. (DOMESTIC)	1532.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1262	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	24.0	Reshipping	Rail beyond Chicago	32.5	Local		Rail beyond Chicago	24.0 Reshipping
			35.375	Thru		43.875	Thru			40.0 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
Philadelphia, Pa. (EXPORT)	1532.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1262	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	16.5	Reshipping	Rail beyond Chicago	25.0	Local		Rail beyond Chicago	16.5 Reshipping
			27.875	Thru		36.375	Thru			32.5 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
New York, N. Y. (DOMESTIC)	1612.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1342	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	26.0	Reshipping	Rail beyond Chicago	34.5	Local		Rail beyond Chicago	26.0 Reshipping
			37.375	Thru		45.875	Thru			42.0 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
New York, N. Y. (EXPORT)	1612.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1342	Rail to Chicago	16.0 Propl.
		Rail beyond Chicago	17.5	Reshipping	Rail beyond Chicago	26.0	Local		Rail beyond Chicago	17.5 Reshipping
			28.875	Thru		37.375	Thru			33.5 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
Baltimore, Md.) DOMESTIC	1483.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1213	Rail to Chicago	16.0 Propl.
Norfolk, Va.)	1636.2	Rail beyond Chicago	23.0	Reshipping	Rail beyond Chicago	31.5	Local	1366	Rail beyond Chicago	23.0 Reshipping
			34.375	Thru		42.875	Thru			39.0 Thru
			4.625	Less		3.875	More			
More or less than all-rail										
Baltimore, Md.) EXPORT	1483.2	Barge to Chicago	11.375		Barge to Chicago	11.375		1213	Rail to Chicago	16.0 Propl.
Norfolk, Va.)	1636.2	Rail beyond Chicago	16.0	Reshipping	Rail beyond Chicago	24.5	Local	1366	Rail beyond Chicago	16.0 Reshipping
			27.375	Thru		35.875	Thru			32.0 Thru
			4.625	Less		3.875	More			
More or less than all-rail										

M - Indicates mileage from Morris, Ill.
S - " " " Seneca, Ill.
H - " " " Henry, Ill.
C - " " " Chillicothe, Ill.
P - " " " Peoria, Ill.
Px - " " " Pekin, Ill.

NOTE A - Barge factors to Chicago, Ill. are those maintained by independent barge lines and include trimming charges at Chicago, Ill. as shown in Exhibit No. _____. The local, reshipping and northwest proportional factors beyond Chicago, Ill. are those shown in Exhibit No. ___. The reshipping rates at present are applicable to ex-barge or ex-lake grain to destination territory east of the Western Termini. The northwest proportional rates are at present applicable to ex-barge grain, and also apply on ex-lake grain.

NOTE B - The I. P. rail rates to Chicago, Ill. are those shown in Exhibit No. _____. The reshipping rate beyond Chicago, Ill. applies to traffic having origin in Illinois. The transit balance rates shown represent the balance of the thru rate after deducting the paid in rate to Chicago, Ill. The sixth class rate is applicable via Chicago, Ill., and the transit balance is the difference between the thru sixth class rate and the rate paid in to Chicago, Ill.

TARIFF AUTHORITIES

Alton R.R. Tariff 1604-O	- I.C.C. No. 208
Rock Island Ry. Tariff 34560-B	- I.C.C. No. C-12847
Nickel Plate Road Tariff G.F.D. 15-U	- I.C.C. No. 5891
Illinois Central R.R. Tariff 1537-K	- I.C.C. No. A-11148
Burlington R.R. Tariff G.F.O. 6786-L	- I.C.C. No. 19318
B. T. Jones Tariff 535-A	- I.C.C. No. 3300
B. T. Jones Tariff 245-G	- I.C.C. No. 3356
B. T. Jones Tariff 483	- I.C.C. No. 2447
L. E. Kipp Tariff 332-B	- I.C.C. No. A-2942

STATEMENT COMPARING LOCAL WITH EX-LAKE RATES FROM LAKE ERIE PORTS
RATES IN CENTS PER HUNDRED POUNDS

Exhibit No. 70
Witness: J. J. Schimmel

ON CORN TO EASTERN TERRITORY

FROM	Baltimore,Md.		Philadelphia,Pa.		New York, N.Y.		Boston,Mass.	
	Local	Ex-Lake NOTE-A	Local	Ex-Lake NOTE-A	Local	Ex-Lake NOTE-A	Local	Ex-Lake NOTE-A
DOMESTIC								
Buffalo . . . . . .N.Y.	22.	18.	22.	18.	23.	18.	25.	20.
Erie. . . . . Pa.	20.	18.	21.	18.	23.	18.	25.	20.
Toledo. . . . . .Ohio	23.	20.	24.	21.	26.	23.	28.	25.
EXPORT								
Buffalo . . . . . .N.Y.	22.	10.	22.	10.	23.	10.5	25.	10.5
Erie. . . . . Pa.	20.	10.	20.5	10.	21.5	10.5	21.5	....
Toledo. . . . . .Ohio	23.	13.	23.5	13.	24.5	18.	24.5	18.

ON GRAIN TO CENTRAL FREIGHT ASSOCIATION AND ILLINOIS FREIGHT ASSOCIATION TERRITORY

	Cleveland,Ohio		Sandusky,Ohio		Toledo,Ohio			
	Local	Ex-Lake NOTE-A	Local	Ex-Lake NOTE-A	Local	Ex-Lake NOTE-A	Local	Ex-Lake NOTE-A
Cincinnati. . . . . .Ohio	16.	14.	14.	.....	14.	14.		
Decatur . . . . . .Ill.	22.	....	23.	17.	20.	17.		
Evansville. . . . . .Ind.	25.	20.	25.	....	25.	20.		
Indianapolis. . . . . .Ind.	18.	16.	16.	....	16.	....		
Indiana . . . . . Pa.	20.	19.	20.	....	20.	....		
Lawrenceburg. . . . . .Ind.	18.	16.	18.	....	18.	16.		
Louisville. . . . . Ky.	24.	20.	20.	....	20.	....		
Peoria. . . . . .Ill.	23.	17.	23.	17.	20.	17.		
Washington. . . . . Pa.	15.	....	17.	14.	17.	....		

NOTE-A: Indicates rates are net and do not include elevation services or charges. The Ex-Lake rates from Buffalo, N.Y. and Erie, Pa. are published to include elevation of one cent per bushel - we have deducted 1.7? per hundred in order to obtain the net-rate. The Ex-Lake rates from Toledo, Cleveland and Sandusky, Ohio are published as net rates.

TARIFF AUTHORITIES

W. S. Curlett, Agent	Tariff No.	10-C	I.C.C. No. A-563
W. S. Curlett, Agent	Tariff No.	25-B	I.C.C. No. A-436
P.R.R. R.R.	Tariff No.	1646-	I.C.C. No. 2129
P.R.R. R.R.	Tariff No.	1722	I.C.C. No. 1244
P.R.R. R.R.	Tariff No.	73-B	I.C.C. No. 1861
N.Y.C. R.R.	Tariff No.	643-B	I.C.C. No.LS1339

EXHIBIT NO. 71
WITNESS J. J. Sohlemel

SCHEDULE OF RATES ON CORN FROM MORRIS, ILLINOIS, COMPARING INDEPENDENT BARGE-RAIL AS AT PRESENT AND PROPOSED WITH BARGE-LAKE-RAIL VIA BUFFALO, NEW YORK, AND RAIL-LAKE-RAIL VIA BUFFALO, NEW YORK

RATES IN CENTS PER HUNDRED POUNDS

TO	PRESENT BARGE-RAIL	PROPOSED BARGE-RAIL	ALL-RAIL	BARGE-LAKE-RAIL VIA BUFFALO, N. Y.			RAIL-LAKE-RAIL VIA BUFFALO, N. Y.		
Baltimore, Md. (DOMESTIC)				Barge to Chicago	3.75		Rail to Chicago (non-transit)	5.0	
				Lake - Chicago to Buffalo	6.25		Lake - Chicago to Buffalo	6.25	
				Brokerage & handling	.50		Brokerage & handling	.50	
				Rail (ex-lake) Buffalo to Baltimore	19.79		Rail (ex-lake) Buffalo to Baltimore	19.79	
					30.29	Thru		31.54	Thru
				Less elevation at Buffalo	1.78		Less elevation at Buffalo	1.78	
	36.76	38.28	32.5		28.51			29.76	
Philadelphia, Pa. (DOMESTIC)				Barge to Chicago	3.75		Rail to Chicago (non-transit)	5.0	
				Lake - Chicago to Buffalo	6.25		Lake - Chicago to Buffalo	6.25	
				Brokerage & handling	.50		Brokerage & handling	.50	
				Rail (ex-lake) Buffalo to Philadelphia	19.79		Rail (ex-lake) Buffalo to Philadelphia	19.79	
					30.29	Thru		31.54	Thru
				Less elevation at Buffalo	1.78		Less elevation at Buffalo	1.78	
	37.76	39.28	33.5		28.51			29.76	
New York, N. Y. (DOMESTIC)				Barge to Chicago	3.75		Rail to Chicago (non-transit)	5.0	
				Lake - Chicago to Buffalo	6.25		Lake - Chicago to Buffalo	6.25	
				Brokerage & handling	.50		Brokerage & handling	.50	
				Rail (ex-lake) Buffalo to New York	19.79		Rail (ex-lake) Buffalo to New York	19.79	
					30.29	Thru		31.54	Thru
				Less elevation at Buffalo	1.78		Less elevation at Buffalo	1.78	
	37.76	39.28	35.5		28.51			29.76	
Boston, Mass. (DOMESTIC)				Barge to Chicago	3.75		Rail to Chicago (non-transit)	5.0	
				Lake - Chicago to Buffalo	6.25		Lake - Chicago to Buffalo	6.25	
				Brokerage & handling	.50		Brokerage & handling	.50	
				Rail (ex-lake) Buffalo to Boston	21.79		Rail (ex-lake) Buffalo to Boston	21.79	
					32.29	Thru		33.54	Thru
				Less elevation at Buffalo	1.78		Less elevation at Buffalo	1.78	
	39.76	45.28	37.5		30.51			31.76	

TO	BARGE-LAKE-RAIL VIA BUFFALO, N. Y. 4-17-39 TO 11-30-39	PRESENT	I.& S. 4618	RAIL-LAKE-RAIL VIA BUFFALO, N. Y. 4-17-39 TO 11-30-39	PRESENT	I. & S. 4618
Baltimore, Md. (EXPORT)						
Barge to Chicago	3.75	3.75	3.75			
Lake - Chicago to Buffalo	6.25	6.25	6.25			
Brokerage & handling	.50	.50	.50			
Rail (ex-lake) Buffalo to Baltimore	7.95	11.79	9.5			
	18.45	22.29	20.0			
Rail to Chicago (non-transit)				5.0	5.0	5.0
Lake - Chicago to Buffalo				6.25	6.25	6.25
Brokerage & handling				.50	.50	.50
Rail (ex-lake) Buffalo to Baltimore				7.95	11.79	9.5
				19.70	23.54	21.25
Philadelphia, Pa. (EXPORT)						
Barge to Chicago	3.75	3.75	3.75			
Lake - Chicago to Buffalo	6.25	6.25	6.25			
Brokerage & handling	.50	.50	.50			
Rail (ex-lake) Buffalo to Philadelphia	7.95	11.79	9.5			
	18.45	22.29	20.0			
Rail to Chicago (non-transit)				5.0	5.0	5.0
Lake - Chicago to Buffalo				6.25	6.25	6.25
Brokerage & handling				.50	.50	.50
Rail (ex-lake) Buffalo to Philadelphia				7.95	11.79	9.5
				19.70	23.54	21.25
New York, N. Y. (EXPORT)						
Barge to Chicago	3.75	3.75	3.75			
Lake - Chicago to Buffalo	6.25	6.25	6.25			
Brokerage & handling	.50	.50	.50			
Rail (ex-lake Buffalo to New York	8.45	12.29	10.00			
	18.95	22.79	20.5			
Rail to Chicago (non-transit)				5.0	5.0	5.0
Lake - Chicago to Buffalo				6.25	6.25	6.25
Brokerage & handling				.50	.50	.50
Rail (ex-lake) Buffalo to New York				8.45	12.29	10.00
				20.20	24.04	21.75
Boston, Mass. (EXPORT)						
Barge to Chicago	3.75	3.75	3.75			
Lake - Chicago to Buffalo	6.25	6.25	6.25			
Brokerage & handling	.50	.50	.50			
Rail (ex-lake) Buffalo to Boston	8.45	12.29	10.0			
	18.95	22.79	20.5			
Rail to Chicago (non-transit)				5.0	5.0	5.0
Lake - Chicago to Buffalo				6.25	6.25	6.25
Brokerage & handling				.50	.50	.50
Rail (ex-lake) Buffalo to Boston				8.45	12.29	10.0
				20.20	24.04	21.75

TARIFF AUTHORITIES

Rock Island Ry. Tariff 34560-B - I.C.C. No. C-12947
U. S. Corlett Tariff 10-I - I.C.C. No. A-963
U. S. Corlett Tariff 28-B - I.C.C. No. A-47

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EXHIBIT NO. _____
WITNESS J. J. Schimmel

SCHEDULE OF RATES APPLYING ON CORN COMPARING LAKE RATES FOR LAST HALF OF 1939 SEASON ON GREAT LAKES WITH THE ALL RAIL LOCAL AND PROPORTIONAL RATES

RATE IN CENTS PER HUNDRED POUNDS

FROM DULUTH, MINN.

TO	LAKE RATE	LOCAL	ALL RAIL	PROPORTIONAL	
Chicago, Ill.	6.25	Duluth to Chicago	26.0	Duluth to Chicago	13.0
Brokerage and handling	.50				
	6.75		26.0		13.0
Toledo, O.	5.805	Duluth to Chicago	26.0	Duluth to Chicago	13.0
Brokerage and handling	.50	Chicago to Toledo	15.5 A	Chicago to Toledo	15.5 A
	6.305		41.5		28.5
Erie, Pa.	5.805	Duluth to Chicago	26.0	Duluth to Chicago	13.0
Brokerage and handling	.50	Chicago to Erie	21.5 A	Chicago to Erie	21.5 A
	6.305		47.5		34.5
Buffalo, N. Y.	6.25	Duluth to Chicago	26.0	Duluth to Chicago	13.0
Brokerage and handling	.50	Chicago to Buffalo	21.5 A	Chicago to Buffalo	21.5 A
	6.75		47.5		34.5
Montreal, Que. (EXPORT)	10.715	Duluth to Chicago	26.0	Duluth to Chicago	13.0
Brokerage and handling	.75	Chicago to Montreal	22.5 B	Chicago to Montreal	22.5 B
	11.465		48.5		35.5

FROM CHICAGO, ILL.

TO	LAKE RATE	LOCAL	ALL RAIL	PROPORTIONAL	
Toledo, O.	5.805	Chicago to Toledo	17.0	Chicago to Toledo	15.5 A
Brokerage and handling	.50				
	6.305		17.0		15.5
Erie, Pa.	5.805	Chicago to Erie	28.5	Chicago to Erie	21.5 A
Brokerage and handling	.50				
	6.305		28.5		21.5
Buffalo, N. Y.	6.25	Chicago to Buffalo	28.5	Chicago to Buffalo	21.5 A
Brokerage and handling	.50				
	6.75		28.5		21.5
Montreal, Que. (EXPORT)	10.715	Chicago to Montreal	31.0	Chicago to Montreal	22.5 B
Brokerage and handling	.75				
	11.465		31.0		22.5

A - NW Proportional
B - Reshipping

120

EXHIBIT NO. 7
WITNESS J. C. Schimmel

SCHEDULE OF RATES ON CORN COMPARING LAKE AND RAIL VIA BUFFALO, N. Y., TOLEDO, OHIO AND ERIE, PA., WITH THE ALL-RAIL PROPORTIONAL RATES

RATES IN CENTS PER HUNDRED POUNDS

FROM DULUTH, MINN. AND SUPERIOR, WIS.

TO	LAKE AND RAIL		ALL RAIL	
Baltimore, Md. (DOMESTIC)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13
	Rail (ex-lake) Buffalo to Baltimore	19.79	Chicago proportional to Baltimore	23
		26.54 Thru		
	Less elevation at Buffalo	1.78		
		24.76		36 Thru
	Lake and rail less than all-rail	11.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to Baltimore	20.0		
		26.305 Thru		36 Thru
	Lake and rail less than all-rail	9.695		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to Baltimore	19.79		
		26.095 Thru		
	Less elevation at Erie	1.78		
		24.315		36 Thru
	Lake and rail less than all-rail	11.685		
Baltimore, Md. (EXPORT)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13
	Rail (ex-lake) Buffalo to Baltimore	11.79	Chicago proportional to Baltimore	16
		18.54 Thru		
	Less elevation at Buffalo	1.78		
		16.76		29 Thru
	Lake and rail less than all-rail	12.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to Baltimore	13.0		
		19.305 Thru		29 Thru
	Lake and rail less than all-rail	9.695		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to Baltimore	11.79		
		18.095 Thru		
	Less elevation at Erie	1.78		
		16.315		29 Thru
	Lake and rail less than all-rail	12.685		
Philadelphia, Pa. (DOMESTIC)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13
	Rail (ex-lake) Buffalo to Philadelphia	19.79	Chicago proportional to Philadelphia	24
		26.54 Thru		
	Less elevation at Buffalo	1.78		
		24.76		37 Thru
	Lake and rail less than all-rail	12.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to Philadelphia	21.0		
		27.305 Thru		37 Thru
	Lake and rail less than all-rail	9.695		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to Philadelphia	19.79		
		26.095 Thru		
	Less elevation at Erie	1.78		
		24.315		37 Thru
	Lake and rail less than all-rail	12.685		
Philadelphia, Pa. (EXPORT)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13
	Rail (ex-lake) Buffalo to Philadelphia	11.79	Chicago proportional to Philadelphia	16.5
		18.54 Thru		
	Less elevation at Buffalo	1.78		
		16.76		29.5 Thru
	Lake and rail less than all-rail	12.74		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to Philadelphia	13.0		
		19.305 Thru		29.5 Thru
	Lake and rail less than all-rail	10.195		
	Lake to Erie, Pa.	6.305		
	Rail (ex-Lake) Erie to Philadelphia	11.79		
		18.095 Thru		
	Less elevation at Erie	1.78		
		16.315		29.5 Thru
	Lake and rail less than all-rail	13.185		

New York, N. Y. (DOMESTIC)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13.0
	Rail (ex-lake) Buffalo to New York	19.79	Chicago proportional to New York	26.0
		26.54 Thru		
	Less elevation at Buffalo	1.78		
		24.76		39.0 Thru
	Lake and rail less than all-rail	14.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to New York	23.0		
		29.305 Thru		39.0 Thru
	Lake and rail less than all-rail	9.695		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to New York	19.79		
		26.095 Thru		
	Less elevation at Erie	1.78		
		24.315		39.0 Thru
	Lake and rail less than all-rail	14.685		
New York, N. Y. (EXPORT)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13.0
	Rail (ex-lake) Buffalo to New York	12.29	Chicago proportional to New York	17.5
		19.04 Thru		30.5 Thru
	Less elevation at Buffalo	1.78		
		17.26		
	Lake and rail less than all-rail	13.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to New York	18.0		
		24.305 Thru		30.5 Thru
	Lake and rail less than all-rail	6.195		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to New York	12.29		
		18.595 Thru		
	Less elevation at Erie	1.78		
		16.815		30.5 Thru
	Lake and rail less than all-rail	13.685		
Boston, Mass. (DOMESTIC)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13.0
	Rail (ex-lake) Buffalo to Boston	21.79	Chicago proportional to Boston	28.0
		28.54 Thru		
	Less elevation at Buffalo	1.78		
		26.76		41.0 thru
	Lake and rail less than all-rail	14.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to Boston	25.0		
		31.305 Thru		41.0 Thru
	Lake and rail less than all-rail	9.695		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to Boston	21.79		
		28.095 Thru		
	Less elevation at Erie	1.78		
		26.315		41.0 Thru
	Lake and rail less than all-rail	14.685		
Boston, Mass. (EXPORT)	Lake to Buffalo, N. Y.	6.75	Duluth proportional to Chicago	13.0
	Rail (ex-lake) Buffalo to Boston	12.29	Chicago proportional to Boston	17.5
		19.04 Thru		
	Less elevation at Buffalo	1.78		30.5 Thru
		17.26		
	Lake and rail less than all-rail	13.24		
	Lake to Toledo, O.	6.305		
	Rail (ex-lake) Toledo to Boston	18.0		
		24.305 Thru		30.5 Thru
	Lake and rail less than all-rail	6.195		
	Lake to Erie, Pa.	6.305		
	Rail (ex-lake) Erie to Boston	12.29		
		18.595 Thru		
	Less elevation at Erie	1.78		
		16.815		30.5 Thru
	Lake and rail less than all-rail	13.685		

TARIFF AUTHORITIES

W. S. Curlett Tariff 10-C - I.C.C. No. A-563
B. T. Jones Tariff 245-G - I.C.C. No. 3356

EXHIBIT NO. 25
WITNESS J. J. Schimmel

SCHEDULE OF RATES APPLYING ON CORN COMPARING LAKE AND RAIL VIA CHICAGO, ILLINOIS, WITH ALL RAIL PROPORTIONAL RATES

RATES IN CENTS PER HUNDRED POUNDS

FROM DULUTH, MINN. AND SUPERIOR, WISCONSIN

TO	LAKE AND RAIL		ALL RAIL	
Buffalo, N. Y. / Pittsburgh, Pa.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	21.5 NW Propl.	Rail beyond Chicago	21.5 NW Propl.
		28.25 Thru		34.5 Thru
More or less than all-rail thru rate		6.25 Less		
Cincinnati, O.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	15.5 NW Propl.
		22.25 Thru		28.5 Thru
More or less than all-rail thru rate		6.25 Less		
Circleville, O.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	17.5 NW Propl.	Rail beyond Chicago	17.5 NW Propl.
		24.25 Thru		30.5 Thru
More or less than all-rail thru rate		6.25 Less		
Detroit, Mich.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	15.5 NW Propl.
		22.25 Thru		28.5 Thru
More or less than all-rail thru rate		6.25 Less		
Indianapolis, Ind.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	14.5 NW Propl.	Rail beyond Chicago	14.5 NW Propl.
		21.25 Thru		27.5 Thru
More or less than all-rail thru rate		6.25 Less		
Louisville, Ky.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	17.5 NW Propl.	Rail beyond Chicago	17.5 NW Propl.
		24.25 Thru		30.5 Thru
More or less than all-rail thru rate		6.25 Less		
Toledo, O.	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	15.5 NW Propl.	Rail beyond Chicago	15.5 NW Propl.
		22.25 Thru		28.5 Thru
More or less than all-rail thru rate		6.25 Less		
Boston, Mass.) DOMESTIC / Portland, Me.)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	28.0 Reshipping	Rail beyond Chicago	28.0 Reshipping
		34.75 Thru		41.0 Thru
More or less than all-rail thru rate		6.25 Less		
Boston, Mass.) EXPORT / Portland, Me.)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	17.5 Reshipping	Rail beyond Chicago	17.5 Reshipping
		24.25 Thru		30.5 Thru
More or less than all-rail thru rate		6.25 Less		
Philadelphia, Pa. (DOMESTIC)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	24.0 Reshipping	Rail beyond Chicago	24.0 Reshipping
		30.75 Thru		37.0 Thru
More or less than all-rail thru rate		6.25 Less		
Philadelphia, Pa. (EXPORT)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	16.5 Reshipping	Rail beyond Chicago	16.5 Reshipping
		23.25 Thru		29.5 Thru
More or less than all-rail thru rate		6.25 Less		
New York, N. Y. (DOMESTIC)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	26.0 Reshipping	Rail beyond Chicago	26.0 Reshipping
		32.75 Thru		39.0 Thru
More or less than all-rail thru rate		6.25 Less		
New York, N. Y. (EXPORT)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	17.5 Reshipping	Rail beyond Chicago	17.5 Reshipping
		24.25 Thru		30.5 Thru
More or less than all-rail thru rate		6.25 Less		
Baltimore, Md.) DOMESTIC / Norfolk, Va.)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	23.0 Reshipping	Rail beyond Chicago	23.0 Reshipping
		29.75 Thru		36.0 Thru
More or less than all-rail thru rate		6.25 Less		
Baltimore, Md.) EXPORT / Norfolk, Va.)	Lake to Chicago	6.75	Rail to Chicago	13.0 Propl.
	Rail (ex-lake) beyond Chicago	16.0 Reshipping	Rail beyond Chicago	16.0 Reshipping
		22.75 Thru		29.0 Thru
More or less than all-rail thru rate		6.25 Less		

Exhibit No. 76
Witness: J. J. Schimmel

SCHEDULE OF RATES ON GRAIN FROM INDIANA ORIGINS SHOWING LOCAL & LAKE PROPORTIONAL

RATES IN CENTS PER HUNDRED

FROM	TO CHICAGO, ILL.
C.& E.I. ORIGINS Carlisle. . . . . .Ind. Evansville. . . . . .Ind. Farmersburg . . . . . .Ind. Gravel Pit. . . . . .Ind. Haubstadt . . . . . .Ind. Ingle . . . . . .Ind. Jackson Hill. . . . . .Ind. King. . . . . .Ind. Miller. . . . . .Ind. Oaktown . . . . . .Ind. Patoka. . . . . .Ind. Solitude. . . . . .Ind. Sullivan. . . . . .Ind. Vincennes . . . . . .Ind. Young . . . . . .Ind.	LOCAL RATE 18. LAKE PROPORTIONAL 12. APPLICATION OF LAKE PROPORTIONAL Grain originating at stations on the C.& E.I.Ry. as indicated below, on which local rate has been paid to Chicago, Ill., and the original paid freight bills are surrendered, certified by the Central Inspection and Weighing Bureau, showing that the grain has been forwarded from Chicago, Ill.,via Lake or Lake & Rail, the C.& E.I.Ry. Co. will adjust the charges into Chicago, Ill. to 12 cents per 100 pounds, the inbound minimum weight to remain unchanged. Rileysburg, Ind. (Index 44) to Terre Haute, Ind. (Index 69), inclusive. Brazil, Ind. (Index 240). Ehrmandale, Ind. (Index 251). Young,Ind. (Index 253) to Mt.Vernon,Ind. (Index 305), inclusive.
C.M.St.P.& P. ORIGINS Abbott. . . . . .Ind. Coalmont. . . . . .Ind. Glendora. . . . . .Ind. Hawton. . . . . .Ind. Jacksonville. . . . . .Ind. Keller. . . . . .Ind. Linton. . . . . .Ind. Marts . . . . . .Ind. Sullivan. . . . . .Ind. Vicksburg . . . . . .Ind.	LOCAL RATE 18. LAKE PROPORTIONAL 12. APPLICATION OF LAKE PROPORTIONAL On grain originating at stations on the C.M.St.P.& P.R.R. (Terre Haute Division) which has paid the local rate into Chicago,Ill.,if the original paid freight bills are surrendered, certified by Assistant Manager of the Central Inspection & Weighing Bureau, showing that the grain has been forwarded from Chicago,Ill., via Lake or Lake and Rail the C.M.St.P.& P. will adjust the charges into Chicago, Ill., to the following rates, inbound minimum weight to remain unchanged. On grain C.L., as described in List 1 from stations: Randall, Ind. (Index No.170), to Linton, Ind. (Index No.300), inclusive, rate twelve (12) cents per 100 pounds.
I.C. ORIGINS New Lebanon . . . . . .Ind. Sullivan. . . . . .Ind.	LOCAL RATE 18. LAKE PROPORTIONAL 12. APPLICATION OF LAKE PROPORTIONAL Grain, viz.: Barley, Corn, Oats, Rye, Wheat and Screenings only (not applicable on articles taking same rates),as described in list 5. From New Lebanon, Ind. and Sullivan, Ind. to Chicago, Ill. (applicable only on traffic destined beyond via Lake Lines) rate 12*cents per 100 pounds. * Under authority of Fourth Section order No. 12218 of January 24, 1936 rate does not apply from intermediate points.

TARIFF AUTHORITIES

C.& E.I.Ry.	No. 600-B	I.C.C. No.	200
C.M.St.P.& P.R.R.	No. 15165-C	I.C.C. No.	B-6248
I.C.R.R.	No. 1537-K	I.C.C. No.	A-11148

I. & S. DOCKET 4718
EXHIBIT NO. 7
WITNESS - J. J. Schimmel

CONTINENTAL GRAIN COMPANY

STATEMENT OF CORN RECEIPTS AND SHIPMENTS FOR ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL. (NUMBER OF CARS COMPUTED AT 84,638 POUNDS PER CAR)

FOR PERIOD MAY 1st TO NOVEMBER 30, 1939

RECEIVED INBOUND			DISPOSITION OUTBOUND			CARS	PERCENT
VIA RAIL Even rate and I.P.			Via Rail	28,205,690	pounds	333	73.83
Pounds -	42,351,070	501 cars	Via Lake	9,989,160	"	118	26.17
				38,194,850	"		
			On hand 11/30/39	4,156,220	"	451	100.00
				42,351,070	"		
VIA RAIL Lake-Local			Via Rail	1,364,960	pounds	16	1.12
			Via Lake	120,017,710	"	1,418	98.88
Pounds -	121,673,410	1,438 cars		121,382,670	"		
			On hand 11/30/39	290,740	"	1,434	100.00
				121,673,410	"		
VIA BARGE			Via Rail	17,384,610	pounds	205	9.6
Pounds -	187,293,500	2,210 cars	Via Lake	162,941,800	"	1,926	90.3
			Cancelled a/c Quarterly Adjustment	282,750	"	3	.1
				180,609,160	"		
			On hand 11/30/39	6,684,340	"	2,134	100.0
				187,293,500	"		

FOR PERIOD DECEMBER 1, 1939 TO JANUARY 14, 1940

RECEIVED		SHIPMENTS			CARS	PERCENT
VIA RAIL						
Even rate and I.P.		Via Rail	988,530	pounds	12	100.0
Pounds - 6,053,920	72 cars	Via Lake	NONE	"	-	-
			988,530	"		
		On hand 1/14/40	5,065,390	"	12	100.0
			6,053,920	"		
VIA RAIL						
Lake-Local		Via Rail	NONE		-	-
Pounds - 698,530	8 cars	Via Lake	NONE		-	-
		On hand 1/14/40	698,530	pounds	-	-
VIA BARGE						
Pounds - 48,234,230	570 cars	Via Rail	19,369,570	pounds	229	100.0
		Via Lake	NONE	"	-	-
			19,369,570	"		
		On hand 1/14/40	28,864,660	"	229	100.0
			48,234,230	"		

STATEMENT OF CORN SHIPMENTS FROM ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL.

PERIOD MAY 1, 1939 TO NOVEMBER 30, 1939

	POUNDS	CARS	PERCENT OF TOTAL DISPOSITION	PERCENT OF PARTICULAR TYPE OF DISPOSITION
TOTAL DISPOSITION	340,186,680	4,019	100.0	
DISPOSITION BY RAIL				
Rail disposition represented by:				
Even rate or I.P. billing	28,205,690	333	8.3	60.1
Lake local billing	1,364,960	16	0.4	2.9
Ex-barge billing	17,384,610	205	5.1	37.0
		554		100.0
DISPOSITION BY LAKE				
Lake disposition represented by:				
Even rate of I.P. billing	9,989,160	118	2.9	.36
Lake local billing	120,017,710	1,418	35.3	42.23
Ex-barge billing	162,941,800	1,926	47.9	57.32
Ex-barge cancelled account quarterly adjustment	282,750	3	.1	.09
	340,186,680	3,465	100.0	100.00

STATEMENT OF CORN SHIPMENTS FROM ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL.

PERIOD DECEMBER 1, 1939 TO JANUARY 14, 1940

	POUNDS	CARS	PERCENT OF TOTAL DISPOSITION	PERCENT OF PARTICULAR TYPE OF DISPOSITION
TOTAL DISPOSITION	20,358,100	241	100.0	
DISPOSITION BY RAIL				
Rail disposition represented by:				
Even rate or I.P. billing	988,530	12	4.97	4.97
Lake local billing	NONE	-	-	-
Ex-barge billing	19,369,570	229	95.03	95.03
	20,358,100	241	100.00	100.00
DISPOSITION BY LAKE				
Lake disposition represented by:				
Even rate or I.P. billing	-	-	-	-
Lake local billing	-	-	-	-
Ex-barge billing	-	-	-	-

STATEMENT OF SOYA BEAN RECEIPTS BY BARGE AND TOTAL SHIPMENTS FOR ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL. (NUMBER OF CARS COMPUTED AT 90,000 POUNDS PER CAR)

FOR PERIOD MAY 1, 1939 TO NOVEMBER 30, 1939

RECEIVED INBOUND			DISPOSITION OUTBOUND			
					CARS	PERCENT
VIA BARGE			Via Rail	363,220 pounds	4	3.3
Pounds -	10,848,280	121 cars	Via Lake	10,485,060 "	117	96.7
				10,848,280 "	121	100.0

FOR PERIOD DECEMBER 1, 1939 TO JANUARY 14, 1940

VIA BARGE			Via Rail	2,400,000 pounds	27	36.48
Pounds -	9,397,450	104 cars	Via Lake	4,190,270 "	47	63.52
				6,590,270 "		
			On hand 1/14/40	2,807,180 "	74	100.00
				9,397,450 "		

STATEMENT OF SOYA BEAN SHIPMENTS FROM ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL.

PERIOD MAY 1, 1939 TO NOVEMBER 30, 1939

	POUNDS	CARS	PERCENT OF TOTAL DISPOSITION	PERCENT OF PARTICULAR TYPE OF DISPOSITION
TOTAL DISPOSITION	10,848,280	121	100.0	
DISPOSITION BY RAIL				
Rail disposition represented by: Ex-barge billing	363,220	4	3.3	100.0
DISPOSITION BY LAKE				
Lake disposition represented by: Ex-barge billing	10,485,060	117	96.7	100.0
	10,848,280	121	100.0	

PERIOD DECEMBER 1, 1939 TO JANUARY 14, 1940

TOTAL DISPOSITION	6,590,270	74	100.0	
DISPOSITION BY RAIL				
Rail disposition represented by: Ex-barge billing	2,400,000	27	36.5	100.0
DISPOSITION BY LAKE				
Lake disposition represented by: Ex-barge billing	4,190,270	47	63.5	100.0
	6,590,270	74	100.00	

STATEMENT OF WHEAT RECEIPTS BY BARGE AND TOTAL SHIPMENTS
FOR ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL.
(NUMBER OF CARS COMPUTED AT 90,000 POUNDS PER CAR)

FOR PERIOD MAY 1, 1939 TO NOVEMBER 30, 1939

RECEIVED INBOUND			DISPOSITION OUTBOUND				
						CARS	PERCENT
VIA BARGE Pounds	6,654,480	74 cars	Via Rail	90,000	pounds	1	1.35
			Via Lake	6,366,730	"	71	95.94
			Cancelled account quarterly adjustment	197,750	"	2	2.71
				6,654,480	"	74	100.00

FOR PERIOD DECEMBER 1, 1939 TO JANUARY 14, 1940

VIA BARGE Pounds	-	-	-	-	-	-	-

STATEMENT OF WHEAT SHIPMENTS FROM ROCK ISLAND TERMINAL ELEVATOR, SOUTH CHICAGO, ILL.

PERIOD MAY 1, 1939 TO NOVEMBER 30, 1939

	POUNDS	CARS	PERCENT OF TOTAL DISPOSITION	PERCENT OF PARTICULAR TYPE OF DISPOSITION
TOTAL DISPOSITION	6,654,480	74	100.00	
DISPOSITION BY RAIL				
Rail disposition represented by: Ex-barge billing	90,000	1	1.35	100.00
DISPOSITION BY LAKE				
Lake disposition represented by: Ex-barge billing	6,366,730	71	95.94	97.26
Ex-barge billing cancelled account quarterly adjustment	197,750	2	2.71	2.74
	6,564,580	74	100.00	100.00

PERIOD DECEMBER 1, 1939 TO JANUARY 14, 1940

TOTAL DISPOSITION	-	-	-	-

MORRIS GRAIN CO.

I&S Docket 4718
Exhibit ____
Witness RT

RECEIPTS AND DISPOSITION OF ILLINOIS GRAIN FROM MAY 1, 1939 TO NOVEMBER 30, 1939

Page 1.

RECEIPTS VIA LAKE		CARS	TOTAL PERCENT	DISPOSITION OF X LAKE RECEIPTS		PERCENT BY TYPE OF DISPOSITION
Barley	11,167,230 lbs.	124	100%	Via Rail	7,229,830 lbs.	100%
RECEIPTS OF BARGE GRAIN				DISPOSITION OF X BARGE RECEIPTS		
Wheat	22,158,990 lbs.	246		Wheat - Via Rail	5,570,910 "	3.
				" " Lake	14,319,000 "	5.
Corn	275,216,806 "	3251		Corn " Rail	63,865,110 "	18.5
				" " Lake	189,296,710 "	62.5
Oats	15,634,000 "	244		Oats " Rail	13,706,180 "	4.6
				Rye " Rail	290,900 "	
Rye	290,890 "	3		Soy Beans Rail	1,099,900 "	.4
				" " " Lake	18,446,100 "	6.
Beans	33,004,420 "	[illegible]				
				TOTAL	306,594,810 "	100%
TOTAL	346,305,106 "	4136	100%			
RAIL RECEIPTS OF INTRASTATE NON-TRANSIT CORN				DISPOSITION OF INTRASTATE RAIL NON-TRANSIT CORN		
Corn	164,152,800 lbs.	1939	100%	Via Lake	163,464,000 lbs.	100%
*RAIL RECEIPTS OF PROPORTIONAL TRANSIT CORN				DISPOSITION OF PROPORTIONAL RAIL TRANSIT CORN		
Corn	65,184,000 lbs.	770	100%	Via Lake	36,456,000 lbs.	100%

* Contains Indiana Receipts also.

NOTE: All tonnages shown on this exhibit reduced to a per car basis at: wheat, 90,000 lbs.; corn and rye, 84,638 lbs.; oats, 64,000 lbs.; barley, 90,000 lbs.; soy beans, 84,000 lbs.

RECEIPTS & DISPOSITION OF ILLINOIS GRAIN FROM 12/1/39 TO 1/13/40

RECEIPT OF BARGE GRAIN		CARS	TOTAL PERCENT	DISPOSITION OF X BARGE RECEIPTS		PERCENT BY TYPE OF DISPOSITION
Wheat	882,150 lbs.	10		Wheat - Via Rail	882,120 lbs.	
Corn	56,566,280. "	668		Corn " "	478,770 "	
Oats	1,486,220 "	23		Oats " "	904,600 "	
Soy Beans	3,914,970 "	46		Soy Beans - Via Rail	2,980,340 "	
TOTAL	62,849,570 "	747	100%	TOTAL	5,245,830 "	100%
RAIL RECEIPTS OF INTRASTATE NON-TRANSIT CORN				DISPOSITION OF INTRASTATE RAIL NON-TRANSIT CORN		
Corn	16,212,000 lbs.	191		N O N E		
*RAIL RECEIPTS OF PROPORTIONAL TRANSIT CORN				DISPOSITION OF PROPORTIONAL RAIL TRANSIT CORN		
Corn	15,652,000 lbs.	184	100%	Corn - Via Rail	4,116,000 lbs.	100%

*Contains Indiana Receipts also.

DISPOSITION IN PERCENT OF CORN FROM 5/1/39 TO 1/13/40

	NO. OF CARS	PERCENT OF TOTAL DISPOSED	PERCENT OF PARTICULAR TYPE OF DISPOSITION
TOTAL DISPOSITION OF	5407	100%	
DISPOSITION BY RAIL -			
Rail Disposition Represented by:			
Even Rate or Ill.Prop.Billing	48	.9	6.
Lake Local Billing	None		
X Barge Billing	760	14.1	94.
TOTAL	808		100%
DISPOSITION BY LAKE -			
Lake Disposition Represented by:			
Even Rate or Ill. Prop.Billing	430	8.	9.4
Lake Local Billing	1932	35.7	42.
X Barge Billing	2237	41.3	48.6
TOTAL	4599	100%	100%

Exhibit No. 1
I&S Docket No.4718

Statement showing excerpts from tariffs of the B&O RR, Penna RR, Erie RR, GT Ry, PM Ry and MC RR showing application provided in connection with the various "Proportional and Reshipping Rates."

Sheets 1 to 4 cover B&O Tariff ICC WL-10166
Sheets 5 to 9 cover PRR Tariff ICC 573
Sheets 10 and 11 cover PM Tariff ICC 4704
Sheet 12 covers Erie Tariff ICC A-6558
Sheets 13 to 18 cover MC Tariff ICC 5882
Sheets 19 and 20 cover GT Tariff GTLW ICC A-2349

B&O RR. Tariff H 3333 D; See No WL 10166

Effective September 4-1931

APPLICATION OF RATES.

EXPLANATION OF GROUPS.

GROUP "A" (Local Rates).

Rates shown under Group "A" will apply:

On Grain and Grain Products, as described on pages 4 and 5 carloads, originating locally at the following points, viz.:

Chicago, Ill., and points within the Chicago Switching District as provided in Note 8.

GROUP "B" (Trans-Mississippi River).

(See Note 4.)

Rates shown under Group "B" will apply:

On Grain, as described on page 4, carloads.

From Chicago, Ill., and other Junction points within the Chicago District, viz.:

Blue Island	Ill	Hammond	Ind	South Chicago	Ill
♦East Chicago	Ind	Indiana Harbor	Ind	Whiting	Ind

When originating at points in Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof (subject to Note 6), handled under rules governing transit privileges, published in tariffs lawfully on file with the Interstate Commerce Commission, also on through consignments of grains from Trans-Mississippi River territory, except as otherwise specifically provided herein.

GROUP "C" (Trans-Mississippi River).

(See Note 4.)

Rates shown under Group "C" will apply:

On Grain Products, as described on pages 4 and 5, carloads.

From Chicago, Ill., and other Junction points within the Chicago District, viz.:

Blue Island	Ill	Hammond	Ind	South Chicago	Ill
♦East Chicago	Ind	Indiana Harbor	Ind	Whiting	Ind

When originating in Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof, subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission. (See Exceptions.)

Will also apply on Grain Products milled or malted in transit at Northwest Milling or Malting points named in Group 1, page 10, from Grain originating at points in Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof. (A. S. No. NW-1802.)

Exceptions.

Rates from Chicago, Ill., or points enumerated above will apply on Grain Products milled or malted thereat from Grain originating in Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof, also on through consignments of Grain Products from Trans-Mississippi River territory, **except** as otherwise specifically provided herein.

For explanation of Notes and Reference Marks, see pages 5 to 8.

APPLICATION OF RATES Continued.

GROUP "D" (Northwest).

See Note 4.

Rates shown under Group "D" will apply (subject to Note 6)

On Grain, as described on page 4, carloads.

From Chicago, Ill., and other Junction points within the Chicago District, viz:

Blue Island	Ill	Hammond	Ind	South Chicago	Ill
‡East Chicago	Ind	Indiana Harbor	Ind	Whiting	Ind

When originating in the following described territory: (A. S. No. NW-1896.)

(a) Points in Wisconsin.

(b) From points in the Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, **except** Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof. (See Group "B".)

(d) Points in the Dominion of Canada, viz: All points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

‡ (e) On shipments which arrive by Boat Lines at Chicago, Ill., originating at any of the points in the above defined territory.

GROUP "E" (Northwest).

(See Note 4.)

Rates shown under Group "E" will apply (subject to Note 6).

On Grain Products, as described on pages 4 and 5, and Feed, Animal, Poultry or Pigeon, as described in Note 5, carloads.

From Chicago, Ill., and other Junction points within the Chicago District, viz:

Blue Island	Ill	Hammond	Ind	South Chicago	Ill
‡East Chicago	Ind	Indiana Harbor	Ind	Whiting	Ind

Paragraph A. Except as otherwise provided for herein under Group "C" (Trans-Mississippi River), when milled or malted in transit at Northwest Milling or Malting points named in Group 1, page 10, from grains originating at points beyond. (See Note below). (A. S. Nos. NW-1672, NW-1802.)

Note—Transfer bills from western connections must show station at which milled or malted and bear notation, "Milled in transit" or "Malted in transit" (as the case may be), and charges up to Chicago and other junctions of eastern and western roads as named herein, must be prepaid or transfer bills must show **"Free Account Transit,"** otherwise shipments will be charged at local rates east of Chicago or other junctions of eastern and western roads as named herein.

Paragraph B. ‡When milled or malted in transit at **interior milling or malting** points named in Group 2, page 10, from Grain which originates in Wisconsin, the Upper Peninsula of Michigan, and at points west of the Minnesota-Wisconsin State Line, and north of the Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof. (See Note below.)

Note—Transfer bills from western connections must show origin of grain and station at which milled or malted, and bear notation "Milled or Malted in Transit" and charges up to Chicago and other junctions of eastern and western roads as named herein, must be prepaid or transfer bills must show **"Free account Transit,"** otherwise shipments will be charged at local rates east of Chicago, or other junctions of eastern and western roads as named herein.

Paragraph C. ‡When the Grain Products enumerated originate at points in the Upper Peninsula of Michigan, in Wisconsin and at points west of the Minnesota-Wisconsin State Line and which are not included in Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones' I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof.

Paragraph D. ‡Also when milled, malted, mixed or reconsigned in transit at Chicago, Ill., and other junction points named herein en route to final destination in accordance with, and subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the Grain so milled, malted, mixed or reconsigned originated in Wisconsin, the Upper Peninsula of Michigan and west of the Minnesota-Wisconsin State Line and north of Trans-Mississippi River territory, as described in Territorial Directory No. 3-E, Agent B. T. Jones, I. C. C. No. 2008, Baltimore and Ohio Railroad Agency No. 1100-E, supplements thereto or successive issues thereof. (A. S. No. NW-1896.)

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‡Will also apply when the Grain originates at points in the Dominion of Canada, viz: All points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

For explanation of Notes and other Reference Marks, see pages 5 to 8.

‡ This paragraph was changed in Supplement No. 8, effective September 1, 1932 to read as follows:

(e) On shipments which arrive by boat lines at Chicago, Ill.

APPLICATION OF RATES—Continued.

Group 1—List of Northwest Milling and Malting Points.

Aberdeen	S. D	Faribault	Minn	Le Sueur	Minn	St. James	Minn
Albert Lea	Minn	Faulkton	S. D	Madelia	Minn	St. Louis Park	Minn
Alden	Minn	Foley	Minn	Madison	Minn	St. Paul	Minn
Anoka	Minn	Frankfort	S. D	Madison	S. D	St. Peter	Minn
Appleton	Minn	Franklin	Minn	Madison Lake	Minn	Sauk Center	Minn
Arlington	Minn	Frederick	S. D	Manchester	Minn	Selby	S. D
Arlington	S. D	Gaylord	Minn	Mankato	Minn	Shakopee	Minn
Ashton	S. D	Gettysburg	S. D	Marietta	Minn	Short Line Park	Minn
Austin	Minn	Gibbon	Minn	Marshall	Minn	Sisseton	S. D
Baltic	S. D	Glencoe	Minn	Melrose	Minn	Sleepy Eye	Minn
^Bayport	Minn	Goodhue	Minn	Milbank	S. D	Smithville	S. D
Belle Plaine	Minn	Graceville	Minn	Minneapolis	Minn	Spirit Lake	Minn
Belview	Minn	Granite Falls	Minn	Minnesota Transfer	Minn	Springfield	Minn
Benson	Minn	Green Isle	Minn	Mitchell	S. D	Stewart	Minn
Bird Island	Minn	Greenland	Minn	Montevideo	Minn	Stillwater	Minn
Blooming Prairie	Minn	Groton	S. D	Montgomery	Minn	Strandsburg	S. D
Blue Earth	Minn	Hamburg	Minn	Morgan	Minn	Superior	Wis
Bowdle	S. D	Hanley Falls	Minn	Morris	Minn	Toronto	S. D
Boyd	Minn	Hanska	Minn	Morristown	Minn	Vienna	S. D
Bristol	S. D	Hartland	Minn	Morton	Minn	Volin	S. D
Britton	S. D	Hastings	Minn	Mt. Vernon	S. D	Wabasha	Minn
Brookings	S. D	Hazel Run	Minn	Newark	S. D	Waconia	Minn
Butterfield	Minn	Hector	Minn	New London	Minn	Walnut Grove	Minn
Canby	Minn	Henderson	Minn	New Prague	Minn	Warner	S. D
Cannon Falls	Minn	Hixon	Minn	New Richland	Minn	Warsaw	Minn
Canton	Minn	Hosmer	S. D	New Ulm	Minn	Waseca	Minn
Carver	Minn	Howard	S. D	Northfield	Minn	Waterford	Minn
Centerville	S. D	Huron	S. D	Norwood	Minn	Watertown	S. D
Chaska	Minn	Ipswich	S. D	Odessa	Minn	Waterville	Minn
Chippewa Falls	Wis	Jackson	Minn	Olivia	Minn	Waverly	S. D
Clarkfield	Minn	Janesville	Minn	Ortonville	Minn	Weaver	Minn
Cologne	Minn	Jefferson	S. D	Osakis	Minn	Webster	S. D
Dawson	Minn	Jordan	Minn	Otisco	Minn	Wells	Minn
Delhi	Minn	Kasson	Minn	Owatonna	Minn	Westbrook	Minn
Deli Rapids	S. D	Kenyon	Minn	Parker	S. D	West Concord	Minn
Dodge Center	Minn	Kilkenney	Minn	Pipestone	Minn	Wheaton	Minn
Duluth	Minn	Klossner	Minn	Plainview	Minn	White Rock	S. D
Dundas	Minn	LaCrosse	Wis	Plato	Minn	Windom	Minn
Echo	Minn	La Fayette	Minn	Redfield	S. D	Winnebago	Minn
Edgeley	N. D	Lake Benton	Minn	Red Wing	Minn	Winona	Minn
Ellendale	N. D	Lake City	Minn	Redwood	Minn	Winthrop	Minn
Elmore	Minn	Lake Crystal	Minn	Redwood Falls	Minn	Wood Lake	Minn
Elysian	Minn	Lakefield	Minn	Revillo	S. D	Woonsocket	S. D
Eureka	S. D	Lakeville	Minn	Rochester	Minn	Worthington	Minn
Eyota	Minn	Lanesboro	Minn	Rushford	Minn	Yankton	S. D
Fairfax	Minn	Langford	S. D	St. Cloud	Minn	Young America	Minn
Fairmont	Minn	Leroy	Minn				

Group 2—List of Interior Milling or Malting Points.

Akron	Iowa	De Pere	Wis	Lomira	Wis	Ripon	Wis
Algona	Iowa	Des Moines	Iowa	Loyal	Wis	River Falls	Wis
Alma	Wis	Dixon	Ill	Luxemburg	Wis	Rochelle	Ill
Alton	Iowa	Dubuque	Iowa	Manawa	Wis	Rockford	Ill
Ames	Iowa	Eagle	Wis	Manchester	Iowa	Rock Valley	Iowa
Amherst	Wis	Eau Claire	Wis	Manitowoc	Wis	Rubicon	Wis
Amherst Junction	Wis	Elgin	Ill	Manning	Iowa	St. Charles	Ill
Appleton	Wis	Fond du Lac	Wis	Marinette	Wis	Savanna	Ill
Arcadia	Wis	Fort Dodge	Iowa	Marshfield	Wis	Seymour	Wis
Aurora	Ill	Fountain City	Wis	Mauston	Wis	Sheboygan	Wis
Baraboo	Wis	Fox Lake	Wis	Mayville	Wis	Sheldon	Iowa
Barton	Wis	Freeport	Ill	Menomonie	Wis	Sioux City	Iowa
Belmond	Iowa	Fulton	Ill	Merrill	Wis	Sioux Falls	S. D
Beloit	Wis	Galesville	Wis	Milwaukee	Wis	Sparta	Wis
Berlin	Wis	Garber	Iowa	Missouri Valley	Iowa	Spencer	Iowa
Black River Falls	Wis	Grafton	Wis	Neenah	Wis	Spencer	Wis
Blair	Wis	Green Bay	Wis	Neillsville	Wis	Stevens Point	Wis
Burkhardt	Wis	Greenleaf	Wis	Neola	Iowa	Stoughton	Wis
Burlington	Wis	Harlan	Iowa	New Richmond	Wis	Thiensville	Wis
Cadott	Wis	Hartford	Wis	Northfield	Minn	Tomah	Wis
Cedarburg	Wis	Hudson	Wis	Oconomowoc	Wis	Union Center	Wis
Cedar Falls	Iowa	Humboldt	Iowa	Oconto	Wis	Valley Junction	Wis
Cedar Rapids	Iowa	Independence	Iowa	Oostburg	Wis	Valley Springs	S. D
Charter Oak	Iowa	Iola	Wis	Oshkosh	Wis	Waterloo	Iowa
Cherokee	Iowa	Iron Ridge	Wis	Ossian	Iowa	Waterloo	Wis
Chilton	Wis	Janesville	Wis	Peoria	Ill	Watertown	Wis
Chippewa Falls	Wis	Jefferson	Wis	Pepin	Wis	Waukesha	Wis
Cleveland	Wis	Jefferson Junction	Wis	Peterson	Iowa	Waupaca	Wis
Clinton	Iowa	Kenosha	Wis	Portage	Wis	Wausau	Wis
Columbus	Wis	Kewaskum	Wis	Port Washington	Wis	West Bend	Wis
Danbury	Iowa	Kewaunee	Wis	Prairie du Chien	Wis	Westfield	Wis
Darien	Wis	Lake Mills	Wis	Princeton	Wis	Weyauwega	Wis
Davenport	Iowa	Leeds	Iowa	Reedsburg	Wis	Wisconsin Rapids	Wis
Decorah	Iowa	Le Mars	Iowa	Richland Center	Wis	Wonewoc	Wis
Delavan	Wis						

^Change in name made.

APPLICATION OF RATES—Continued.

EXPLANATION OF GROUPS—Concluded.

GROUP "F" (Reshipping).

(See Note 4).

Rates shown under Group "F" are reshipping or porportional rates (subject to Note 6) and will apply:

On Grain, as described on page 4, carloads.

From Chicago, Ill., and other Junction points within the Chicago District, viz.:

Blue Island	Ill	Hammond	Ind	South Chicago	Ill
East Chicago	Ind	Indiana Harbor	Ind	Whiting	Ind

When originating at points beyond, **except** as provided for under Groups "B" and "D", and will also apply on Grain originating in same territory, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission. (A. S. No. NW-1896.)

GROUP "G" (Reshipping).

(See Note 4).

Group "G" rates are reshipping or proportional rates (subject to Note 6) and will apply:

On Grain Products, as described on pages 4 and 5, carloads.

From Chicago, Ill., and other Junction points within the Chicago District, viz.:

Blue Island	Ill	Hammond	Ind	South Chicago	Ill
East Chicago	Ind	Indiana Harbor	Ind	Whiting	Ind

When consigned or billed through from points beyond, **except** on traffic originating in Trans-Mississippi River Territory (see Group C), or Northwest (see Group E). (A. S. No. NW-1896.)

or

When originating at points beyond, **except** on traffic originating in Trans-Mississippi River Territory (see Group "C") or Northwest (see Group "E") and the traffic is handled under the rules governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.

or

When milled, malted, mixed or reconsigned in transit at Chicago, Ill., and junction points enumerated above, from grain originating at points beyond, **except** grain originating in Trans-Mississippi River Territory (see Group "C") or Northwest (see Group "E").

GROUP "I"

Rates shown under Group "I" will apply:

On By-Products of Grain, as described on page 5, carloads; also on carload quantities of a mixture of By-Products of Grain with Grain and (or) Grain Products described on pages 4 and 5. Not less than 50 per cent of such mixture must consist of By-Products of Grain in order to entitle the said mixture to the commodity rates on By-Products of Grain, subject to minimum carload weight of 40,000 pounds.

CHARGES RESULTING FROM THE RATES IN THIS SUPPLEMENT ARE SUBJECT TO THE PROVISIONS OF TARIFF OF EMERGENCY CHARGES.

SUPPLEMENT 30
To
P.S.C.-PA. 328, W. VA. 44
OHIO 85, M.P.U.C. 28, C.R.C. 49
P.L.& W.R.R., OHIO 658
CANCELS SUPPLEMENTS 3,11,23 AND 28
SUPPLEMENTS ① 8, 29 AND 30 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

SUPPLEMENT 34
To
ILL. C.C. 34
CANCELS SUPPLEMENTS 5,15,27 AND 32
SUPPLEMENTS ① 11, 33 AND 34 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

① CONNECTING LINK BLANKET SUPPLEMENT.

SUPPLEMENT 35
To
I.C.C. 573
CANCELS SUPPLEMENTS 7,16,28 AND 33
SUPPLEMENTS ① 12,34 AND 35 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

SUPPLEMENT 32
To
I.R.C. 48
CANCELS SUPPLEMENTS 5,13,25 AND 30
SUPPLEMENTS 1, ① 10, 31 AND 32 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

TARIFF 73-A

THE PENNSYLVANIA RAILROAD COMPANY

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

—OF—

GRAIN, GRAIN PRODUCTS AND GRAIN BY-PRODUCTS

—FROM STATIONS ON—

PENNSYLVANIA RAILROAD
BOYNE CITY, GAYLORD AND ALPENA R. R.
MANISTEE & NORTHEASTERN R. R.
PITTSBURGH AND LAKE ERIE R. R.
PITTSBURGH, CHARTIERS & YOUGHIOGHENY RY.
PITTSBURGH, LISBON & WESTERN R. R.
YALE SHORT LINE R. R.

—TO STATIONS IN—

ILLINOIS,
INDIANA,
IOWA,
KENTUCKY,
MARYLAND,
MICHIGAN,
MINNESOTA,
MISSOURI,
NEW YORK,
OHIO,
PENNSYLVANIA,
WEST VIRGINIA,
WISCONSIN.

GOVERNED, EXCEPT AS OTHERWISE PROVIDED HEREIN, BY THE OFFICIAL CLASSIFICATION, I.C.C.-O.C.51, P.S.C.-PA.-O.C.51, P.S.C.-W.VA.-O.C.51, OHIO-O.C.51, I.R.C.-O.C.51, ILL.C.C.-O.C.51, M.P.U.C.-O.C.51 (A.H.GAMERLY, AGENT); BY EXCEPTIONS THERETO, I.C.C.2506, P.S.C.-PA.163, P.S.C.-W.VA.153, OHIO 1456, I.R.C.-D.486, ILL.C.C.311, M.P.U.C.458, C.R.C.1259, (B.T.JONES, AGENT), AND BY SUPPLEMENTS TO OR SUCCESSIVE ISSUES OF SAID PUBLICATIONS.

ISSUED FEBRUARY 22, 1933.

EFFECTIVE MARCH 25, 1933.
EXCEPT AS OTHERWISE PROVIDED HEREIN.

W. R. COX,
FREIGHT TRAFFIC MANAGER,
CHICAGO, ILL.

BY G. P. SHAW,
CHIEF OF TARIFF BUREAU,
15 N. 32ND STREET,
PHILADELPHIA, PA.

H. C. OLIVER,
FREIGHT TRAFFIC MANAGER,
PITTSBURGH, PA.

(3500)

RECEIVED		
MONTH	DAY	YEAR

(Box 131)

(G. O. 6476)
AGENT'S INDEX 281
(FORMERLY AGENT'S INDEX 300)

C-38

ITEM

REISSUE, CHANGE IN SUPPLEMENT 23, EFFECTIVE SEPTEMBER 1, 1932, AMENDS PAGE 521 OF TARIFF

413A CANCELS 413

GRAIN, CARLOADS, AS DESCRIBED IN ITEM 5 OF TARIFF.
RATES NAMED HEREIN WHICH ARE SUBJECT TO THIS ITEM APPLY:
ON GRAIN, CARLOADS, WHEN ORIGINATING IN THE FOLLOWING DESCRIBED TERRITORY:
POINTS IN WISCONSIN.
POINTS IN THE UPPER PENINSULA OF MICHIGAN.
POINTS WEST OF THE MINNESOTA-WISCONSIN STATE LINE EXCEPT TRANS-MISSISSIPPI RIVER TERRITORY, AS DESCRIBED IN TERRITORIAL DIRECTORY 3-E, I.C.C.2008.
POINTS IN THE DOMINION OF CANADA, VIZ.: ALL POINTS IN THE PROVINCES OF ALBERTA, BRITISH COLUMBIA, MANITOBA AND SASKATCHEWAN.
ON SHIPMENTS WHICH ARRIVE BY BOAT LINES AT CHICAGO AND POINTS NAMED IN ITEM 423 OF TARIFF. (D593)

REISSUE, CHANGE IN SUPPLEMENT 21, EFFECTIVE JULY 18, 1932, AMENDS PAGE 521 OF TARIFF

418A CANCELS 418 (D343)

GRAIN, CARLOADS AS DESCRIBED IN ITEM 5 OF TARIFF, AS AMENDED.
RATES NAMED HEREIN WHICH ARE SUBJECT TO THIS ITEM APPLY:
FROM CHICAGO, ILL., AND POINTS NAMED IN ITEM 423 OF TARIFF.
WHEN ORIGINATING BEYOND, EXCEPT AS PROVIDED FOR IN ITEMS 400 AND 413 OF TARIFF AND REACHING THE RESHIPPING POINT VIA A RAIL OR WATER TRANSPORTATION LINE THAT CAN FURNISH TO THE OUTBOUND CARRIER FREIGHT BILL OR LIKE DOCUMENTARY EVIDENCE AS TO THE ORIGIN OF TRAFFIC AND RATE PAID TO THE RESHIPPING POINT, AND WILL ONLY APPLY ON SUCH TRAFFIC PROVIDED THAT IN NO CASE SHALL THE COMBINATION THROUGH RATE TO AND FROM THE RESHIPPING POINT BE LESS THAN THE LOCAL RATE FROM THE RESHIPPING POINT OF DESTINATION, THE DIFFERENCE NECESSARY TO PROTECT THE LOCAL RATES FROM THE RESHIPPING POINT TO BE ADDED TO THE RESHIPPING OR PROPORTIONAL RATE THEREFROM.
THESE RATES ARE SUBJECT TO TRANSIT RULES AND REGULATIONS PUBLISHED IN TARIFFS ON FILE WITH THE INTERSTATE COMMERCE COMMISSION.
RATES ALSO APPLY ON THROUGH BILLED SHIPMENTS ORIGINATING AT POINTS IN TERRITORY AS DESCRIBED IN THIS ITEM, NOT STOPPED IN TRANSIT AT RESHIPPING POINTS SUBJECT TO THIS APPLICATION.
FROM MACKINAW CITY, MICH.:
WHEN ORIGINATING AT POINTS BEYOND, EXCEPT ORIGIN TERRITORY PROVIDED FOR IN ITEM 413 OF TARIFF.
THESE RATES ARE SUBJECT TO TRANSIT RULES AND REGULATIONS PUBLISHED IN TARIFFS ON FILE WITH THE INTERSTATE COMMERCE COMMISSION.

REISSUE, CHANGE IN SUPPLEMENT 25, EFFECTIVE NOVEMBER 1, 1932, AMENDS PAGE 521 OF TARIFF

420A CANCELS 420

GRAIN PRODUCTS, CARLOADS, AS DESCRIBED IN ITEMS 20 TO 110 OF TARIFF. RATES NAMED HEREIN WHICH ARE SUBJECT TO THIS ITEM APPLY:
(A) FROM CHICAGO, ILL., AND POINTS NAMED IN ITEM 423 OF TARIFF WHEN ORIGINATING AT POINTS BEYOND (EXCEPT ORIGIN TERRITORY PROVIDED FOR IN ITEMS 403 AND 410 OF TARIFF) RECEIVED FROM CONNECTING RAIL OR LAKE LINES.
(B) FROM MACKINAW CITY, MICH., WHEN ORIGINATING AT POINTS BEYOND (EXCEPT ORIGIN TERRITORY PROVIDED FOR IN ITEM 410 OF TARIFF) RECEIVED FROM CONNECTING RAIL LINES. (D716)

REISSUE, CHANGE IN SUPPLEMENT 25, EFFECTIVE NOVEMBER 1, 1932, AMENDS PAGE 522 OF TARIFF AND SUPPLEMENT 24

431A CANCELS 431

CHICAGO AND NORTHWESTERN RAILWAY STATIONS;
WEST CLINTON, IOWA (ITEM 4845), LOW MOOR, IOWA (ITEM 4850).
ALMONT, IOWA (ITEM 5195) TO CHARLOTTE, IOWA (ITEM 5215) INCLUSIVE.
MAQUOKETA, IOWA (ITEM 5230) TO ANAMOSA, IOWA (ITEM 5265) INCLUSIVE.
RANDALL, IOWA (ITEM 5315) TO GILBERT, IOWA (ITEM 5325) INCLUSIVE.
CLUTIER, IOWA (ITEM 5545) TO SCARVILLE, IOWA (ITEM 5650) INCLUSIVE.
TOLEDO, IOWA (ITEM 5755) TO LEDYARD, IOWA (ITEM 6020) INCLUSIVE.
CRAIG, IOWA (ITEM 6030) TO DOLLIVER, IOWA (ITEM 6075) INCLUSIVE.
SECOR, IOWA (ITEM 6110) TO BRONSON, IOWA (ITEM 6520) INCLUSIVE.
SALEM, S.D. (ITEM 7430) TO YANKTON, S.D. (ITEM 7495) INCLUSIVE.
CHICAGO, BURLINGTON & QUINCY RAILROAD STATION;
SIOUX CITY, IOWA (ITEM 6365).
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD STATIONS;
FILLMORE, IOWA (ITEM 4465).
LEEDS GROVE, IOWA (ITEM 5080) TO WESTON, IOWA (ITEM 5410) INCLUSIVE.
OAKTON, IOWA (ITEM 5500) TO OXFORD MILLS, IOWA (ITEM 5545) INCLUSIVE.
LONG GROVE, IOWA (ITEM 5640) TO MAQUOKETA, IOWA (ITEM 5660) INCLUSIVE.
DES MOINES, IOWA (ITEM 5735) TO GILLETT GROVE, IOWA (ITEM 5965) INCLUSIVE.
ARDON, IOWA (ITEM 6005) TO NORTHERN JUNCTION, MO., (ITEM 6245) INCLUSIVE.
KENWOOD PARK, IOWA (ITEM 6315) TO HIGHLAND, IOWA (ITEM 6400) INCLUSIVE.
MASON CITY, IOWA (ITEM 6575) TO MARION JUNCTION, S.D. (ITEM 6775) INCLUSIVE.
SCOTLAND, S.D. (ITEM 6905).
BRIDGEWATER, S.D. (ITEM 6840) TO MITCHELL, S.D. (ITEM 6860) INCLUSIVE.
OTRANTO, IOWA (ITEM 7005) TO PLYMOUTH JUNCTION, IOWA (ITEM 7022) INCLUSIVE.
SIOUX FALLS, S.D. (ITEM 8655) TO YANKTON, S.D. (ITEM 8870) INCLUSIVE.
UTICA, S.D. (ITEM 8925) TO ETHAN, S.D. (ITEM 8950) INCLUSIVE.
RAPID CITY, S.D. (ITEM 9100).
CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY STATIONS;
LINN, IOWA (ITEM 805) TO NORTHWOOD, IOWA (ITEM 1035) INCLUSIVE.
TODDVILLE, IOWA (ITEM 1265) TO FERNALD, IOWA (ITEM 1500) INCLUSIVE.
BURDETTE, IOWA (ITEM 1545) TO LUVERNE, MINN. (ITEM 1925) INCLUSIVE.
ROUND LAKE, MINN. (ITEM 1945) WORTHINGTON, MINN. (ITEM 1950).
GOODRIE, IOWA (ITEM 2505) TO LAURENS, IOWA (ITEM 2550) INCLUSIVE.
MACLAY, IOWA (ITEM 2565).
ROBBIE, IOWA (ITEM 2575) TO CLOVERDALE, IOWA (ITEM 2605) INCLUSIVE.
CLINTON, DAVENPORT & MUSCATINE RAILWAY STATIONS;
IOWANA, IOWA (ITEM 32) MUSCATINE, IOWA (ITEM 65).
FT. DODGE, DES MOINES & SOUTHERN RAILROAD STATIONS;
FT. DODGE, IOWA (ITEM 5) TO WOLF, IOWA (ITEM 90) INCLUSIVE.
FRAZER, IOWA (ITEM 95).
FLUGSTEAD, IOWA (ITEM 205) TO LEHIGH, IOWA (ITEM 220) INCLUSIVE.
ILLINOIS CENTRAL RAILROAD STATIONS;
REMSEN, IOWA (ITEM 4225) TO SIOUX CITY, IOWA (ITEM 4260) INCLUSIVE.
MASON CITY & CLEAR LAKE RAILROAD STATIONS;
EMERY, IOWA (ITEM 15), CLEAR LAKE, IOWA (ITEM 20). (D746)

SECTION 2 RULES GOVERNING APPLICATION OF PROPORTIONAL AND RE-SHIPPING RATES-CONTINUED

ITEM

REISSUE, CHANGE IN SUPPLEMENT 25, EFFECTIVE NOVEMBER 1, 1932, AMENDS PAGE 522 OF TARIFF AND SUPPLEMENT 24

MINNEAPOLIS & ST. LOUIS RAILROAD STATIONS;

EMMONS, IOWA (ITEM 125) TO WOLF, IOWA (ITEM 230) INCLUSIVE.
HUNTINGTON, IOWA (ITEM 355) TO DANA, IOWA (ITEM 500) INCLUSIVE.
NORTHWOOD, IOWA (ITEM 885) TO MINERVA JCT., IOWA (ITEM 990) INCLUSIVE.
LATIMER, IOWA (ITEM 1275) TO STORY CITY, IOWA (ITEM 1370) INCLUSIVE.

431A CANCELS 431

TAMA & TOLEDO RAILROAD STATION;

TOLEDO, IOWA (ITEM 15).

WATERLOO, CEDAR FALLS & NORTHERN RAILWAY STATIONS; (D746)

WATERLOO, IOWA (ITEM 5) TO ROBINS, IOWA (ITEM 128) INCLUSIVE.
AS DEFINED IN OFFICIAL LIST OF OPEN AND PREPAY STATIONS NO. 47, AGENT F.A.LELAND'S I.C.C. NO. A-12, AGENT B.T.JONES' I.C.C. NO. 2524.

REISSUE, CHANGE IN SUPPLEMENT 17, EFFECTIVE MAY 1, 1932, AMENDS PAGE 522 OF TARIFF

RATES NAMED HEREIN WHICH ARE SUBJECT TO THIS ITEM ARE PROPORTIONAL OR RESHIPPING RATES AND APPLY FROM PEORIA, ILL., ON SHIPMENTS OF GRAIN ORIGINATING AT POINTS IN ILLINOIS AND IOWA AS NAMED IN PARAGRAPH (B) OF THIS ITEM, UNDER THE FOLLOWING CONDITIONS.

(A) WHEN GRAIN IS DESTINED TO:

BLAIRSVILLE, PA. — GAULEY BRIDGE, W.VA. — JOHNSTOWN, PA. — WHEELING, W.VA.
BUFFALO, N.Y. — HUNTINGTON, W.VA. — PARKERSBURG, W.VA.
CHARLESTON, W.VA. — INDIANA, PA. — PITTSBURGH, PA.

AND POINT TAKING SAME RATES OR ARBITRARIES HIGHER AS PER ITEMS 155 TO 185 OF TARIFF (SEE NOTE A).

NOTE A.-ON GRAIN ORIGINATING AT POINTS SHOWN IN ITEM 835 OF THIS TARIFF AND IN TARIFFS NAMED BELOW UNDER ITEMS AND INDICES SHOWN, THE PROPORTIONAL OR RESHIPPING RATES FROM PEORIA, ILL., WILL ONLY APPLY WHEN THE SPECIFIC PROPORTIONAL RATES NAMED IN ITEM 835 OF THIS TARIFF AND IN TARIFFS NAMED BELOW UNDER ITEMS AND INDICES SHOWN, ARE ASSESSED TO PEORIA, ILL.

433A CANCELS 433 (D181)

ROADS	TARIFF I.C.C. NO.	ITEM	INDEX NO.
A.T.& S.F.RY.	12136	40,45,50-D	
ALTON R.R.	30	215-D	
C.B.& Q.R.R.	17852		
C.& I.M.RY.	B-222	PAGE 11	
C.& N.W.RY.	9422		87 TO 100, INCLUSIVE. 2101, 4047 TO 4125, 4181, 4183, 5950, 6201 TO 6253, INCLUSIVE.
C.R.I.& P.RY.	C-12146		
C.C.C.& ST.L.RY.	8558		
ILL.CENT.R.R.	A-10179		396, 502 TO 510.
M.& ST.L.R.R.	B-744	175	
N.Y.C.& ST.L.R.R.	3182		1312 TO 1315.
PEORIA GRAIN AND BARGING CO.	2		
T.P.& W.R.R.	9		

(B) WHEN THE GRAIN IS DESTINED TO POINTS NOT COVERED BY PARAGRAPH (A) OF THIS ITEM AND ORIGINATES AT POINTS IN THE STATE OF ILLINOIS; ALSO ON GRAIN WHICH ORIGINATES AT THE FOLLOWING POINTS IN THE STATE OF IOWA:

BECKS, BELLEVIEW, BETTENDORF, BUFFALO, BULLARDS, BURLINGTON, CAMANCHE, CLINTON, DAVENPORT, DUBUQUE, FT.MADISON, FREDONIA, GREEN ISLAND, KEOKUK, LATTY, LYONS, MEDIAPOLIS, MIDDLEROCK, MONTROSE, MORNING STAR, MUSCATINE, PATTERSON, PLEASANT CREEK, PRINCETON, SABULA, TILE WORKS, WEST BURLINGTON, WEST KEITHSBURG.

REISSUE, ADD IN SUPPLEMENT 11, EFFECTIVE JANUARY 1, 1932, AMENDS PAGE 523 OF TARIFF

436 (D802)

ABERDEEN, S.D.	DAWSON, MINN.	JEFFERSON, S.D.	MONTEVIDEO,	PARKER, S.D.	WATERTOWN, S.D.
ARLINGTON, S.D.	FRANKFORT, S.D.	LAKE PRESTON, S.D.	.....MINN.	PARKSTON, S.D.	WAVERLY, S.D.
BOYD, MINN.	GRACEVILLE, MINN.	MADISON, MINN.	ODESSA, MINN.	REDFIELD, S.D.	WEBSTER, S.D.
BROOKINGS, S.D.	GRANITE FALLS, MINN.	MARIETTA, MINN.	OLIVIA, MINN.	REVILLO, S.D.	WORTHINGTON,
CENTERVILLE, S.D.	GROTON, S.D.	MILBANK, S.D.	ORTONVILLE,	STRANDBURG, S.D.	.....MINN.
CLARKSFIELD, MINN.	HURON, S.D.	MITCHELL, S.D.	.....MINN.	VOLIN, S.D.	YANKTON, S.D.

REISSUE, CHANGE IN SUPPLEMENT 33, EFFECTIVE MARCH 1, 1933, AMENDS PAGE 523 OF TARIFF

438A CANCELS 438 (D1078)

RATES NAMED HEREIN, WHICH ARE SUBJECT TO THIS ITEM, APPLY FROM PEORIA AND DECATUR, ILL., ON THROUGH CONSIGNMENTS OF GRAIN PRODUCTS AND GRAIN BY-PRODUCTS INCLUDING STARCH (ITEMS 20 TO 110 AND 120 TO 150 OF TARIFF OR AS AMENDED), ORIGINATING AT POINTS IN THE STATE OF ILLINOIS EXCEPT POINTS FROM WHICH THROUGH RATES ARE IN EFFECT AS NAMED IN THIS TARIFF AND WESTERN TRUNK LINE TARIFF 68-P, I.C.C. A-2545, ISSUED BY E.B.BOYD, AGENT, ALSO THE FOLLOWING POINTS IN IOWA:

BECKS, BELLEVIEW, BETTENDORF, BUFFALO, BULLARD, BURLINGTON, CAMANCHE, CLINTON, DAVENPORT, DUBUQUE, FT.MADISON, FREDONIA, GREEN ISLAND, KEOKUK, LATTY, LYONS, MEDIAPOLIS, MIDDLEROCK, MONTROSE, MORNING SUN, MUSCATINE, PATTERSON, PLEASANT CREEK, PRINCETON, SABULA, TILE WORKS, WEST BURLINGTON, WEST KEITHSBURG.

SUPPLEMENT 69
TO
P.S.C.-Pa. 328
W.Va. 44
M.P.U.C. 28
C.R.C. 49
CANCELS SUPPLEMENTS 60, 61, 63, 64, 65 and 68
SUPPLEMENTS 30, 57 AND 69 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

SUPPLEMENT 72
TO
OHIO 35
P.L.& W.R.R., OHIO 658
CANCELS SUPPLEMENTS 63, 64, 66, 67, 68 AND 71
SUPPLEMENTS 30, 60 AND 72 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

SUPPLEMENT 76
TO
I.C.C. 573
CANCELS SUPPLEMENTS 67, 68, 70, 71, 72 AND 75
SUPPLEMENTS 35, 64 AND 76 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

SUPPLEMENT 75
TO
Ill. C.C. 34
CANCELS SUPPLEMENTS 66, 67, 69, 70, 71 AND 74
SUPPLEMENTS 34, 63 AND 75 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

SUPPLEMENT 71
TO
I.R.C. 48
CANCELS SUPPLEMENTS 62, 63, 65, 66, 67 AND 70
SUPPLEMENTS 32, 59 AND 71 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF THAT ARE EFFECTIVE ON THE DATE HEREOF.

TARIFF 73-A

THE PENNSYLVANIA RAILROAD COMPANY

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

- On -

GRAIN, GRAIN PRODUCTS AND GRAIN BY-PRODUCTS

- From Stations On -

PENNSYLVANIA RAILROAD

BOYNE CITY, GAYLORD AND ALPENA R.R.
MANISTEE & NORTHEASTERN R.R.
PITTSBURGH AND LAKE ERIE R.R.
PITTSBURGH, LISBON & WESTERN R.R.
YALE SHORT LINE R.R.

- To Stations In -

ILLINOIS,
INDIANA,
IOWA,
KENTUCKY,
MARYLAND,
MICHIGAN,
MINNESOTA,
MISSOURI,
NEW YORK,
OHIO,
PENNSYLVANIA,
WEST VIRGINIA,
WISCONSIN.

Governed, except as otherwise provided herein, by the Official Classification and by Exceptions to said classification. (See Item 265, Page 27 of tariff).

ISSUED JANUARY 15, 1935.

EFFECTIVE FEBRUARY 16, 1935.
Except as otherwise provided herein.
Items issued under Special Permission are published on pages 21, 42 and 43.

BY:
C. P. SHAW,
Chief of Tariff Bureau,
15 N. 32nd Street,
Philadelphia, Pa.

W. R. COI,
Freight Traffic Manager,
Chicago, Ill.

(G.O. 337)
AGENT'S INDEX 281
(Formerly Agent's Index 300)

(2600)

RECEIVED		
Month	Day	Year

(BOI 131)

H. C. OLIVER,
Freight Traffic Manager,
Pittsburgh, Pa.

(C-38)

ITEM	RULES GOVERNING APPLICATION OF PROPORTIONAL AND RESHIPPING RATES
REISSUE.	CHANGE. EFFECTIVE SEPTEMBER 15, 1934, IN SUPPLEMENT 66. AMENDS PAGE 520 OF TARIFF AND SUPPLEMENT 64. (D-2674)
	GRAIN, carloads, as described in Item 5 of tariff:
	Rates named herein which are subject to this item apply:
	On Grain, carloads, when originating in Trans-Mississippi River Territory, also on Grain, carloads, originating at points in Trans-Mississippi River Territory, as described in Territorial Directory 3-F, I.C.C. 2566, issued by B.T. Jones' Agent, handled under Rules Governing Transit Privileges, published in Tariffs lawfully on file with the Interstate Commerce Commission except as otherwise provided herein.
400B Cancels 400A	(74) On Grain originating in Trans-Mississippi River Territory which is handled through "Northwest Milling Points" as specified in Item 435 of tariff (Except on traffic given transit privilege at points named in Item 436 of tariff as amended) and accorded transit privileges at interior Milling or Malting points as specified in Item 430 of tariff under the Rules of the Western Carriers applicable thereat.
	(74) On Flour transited at "Northwest Milling Points" as specified in Item 435 of tariff (Except on traffic given transit privilege at points named in Item 436 of tariff as amended) under the Rules of Western Carriers applicable thereat, from Grain originating at points in Trans-Mississippi River Territory as described in Territorial Directory 3-F, I.C.C. 2566, issued by B. T. Jones', Agent.
REISSUE.	CHANGE. EFFECTIVE JANUARY 30, 1934, IN SUPPLEMENT 53. AMENDS PAGE 520 OF TARIFF AND SUPPLEMENT 35.
	Grain Products, Carloads, as described in Items 20 to 110 of tariff.
	Rates named herein which are subject to this ITEM apply:
	On Grain Products, carloads, when originating in Trans-Mississippi River Territory, as described in Territorial Directory 3-E, I.C.C. 2008, issued by B.T. Jones, Agent, subject to the rules and Charges governing Milling or Malting, Mixing or Reconsigning Privileges, as published in tariffs, lawfully on file with the Interstate Commerce Commission: also
403B Cancels 403A	On Grain Products milled or malted in transit at Chicago, Ill., or points named in Item 423 and 428 of tariff, from Grain originating in Trans-Mississippi River Territory, except as otherwise specifically provided herein; also
	On Grain Products transited at "Northwest Milling Points", as specified in Item 435 of Tariff (except on traffic given transit privilege at points named in Item 436 of tariff as amended) under the rules of the Western Carriers applicable thereat, from Grain or Grain Products originating in Trans-Mississippi River Territory.
REISSUE.	CHANGE. EFFECTIVE JANUARY 30, 1934, IN SUPPLEMENT 53. AMENDS PAGE 520 OF TARIFF AND SUPPLEMENT 35.
	Grain Products, Carloads, as described in Items 20 to 110 of tariff:
	Rates named herein which are subject to this ITEM apply:
	On Grain Products, carloads, when originating in Trans-Mississippi River Territory, as described in Territorial Directory 3-E, I.C.C. 2008, issued by B.T. Jones, Agent, subject to the rules and Charges governing Milling or Malting, Mixing or Reconsigning privileges, as published in tariffs, lawfully on file with the Interstate Commerce Commission; also
405B Cancels 405A	From Peoria, Ill., on Grain Products, Milled or Malted in transit at Peoria, Ill., from Grain originating in Trans-Mississippi River Territory, except otherwise specifically provided herein; also
	On Grain Products transited at "Northwest Milling Points" as specified in Item 435 of tariff (except on traffic given transit privilege at points named in Item 436 of tariff as amended) under the rules of the western carriers applicable thereat, from Grain or Grain Products originating in Trans-Mississippi River Territory, when destined to points north of the line of the Pennsylvania Railroad, Effner, Ind., through Denver and Churubusco, Ind. to Butler, Ind. thence on and north of the New York Central Railroad to Zeuseon, Ohio and the Wabash Railway, Zeuseon, Ohio to Toledo, Ohio.
(D2122)	
REISSUE.	CHANGE. EFFECTIVE JANUARY 30, 1934, IN SUPPLEMENT 53. AMENDS PAGE 520 OF TARIFF.
	Rates named herein which are subject to this ITEM apply from Peoria, Ill. and Decatur, Ill. on Grain By-Products, including Starch (Items 20 to 110 of Tariff) originating in Trans-Mississippi
407A Cancels 407 (D2122)	River Territory, or on Grain By-Products, including Starch manufactured at Decatur, Ill., Peoria, Ill. or "Northwest Milling Points" named in Item 435 of tariff under transit privileges of carriers applicable thereat, from Grain, Grain Products and/or Grain By-Products originating in Trans-Mississippi River Territory, as described in Territorial Directory 3-E, I.C.C. 2008, issued by B.T. Jones, Agent.
REISSUE. AND 53.	CHANGE. EFFECTIVE MAY 15, 1934, IN SUPPLEMENT 57. AMENDS PAGE 521 OF TARIFF AND SUPPLEMENTS 35
	Rates named herein which are subject to this ITEM apply:
	(a) On Grain Products (except Flour as described in Item 412 of tariff as amended) carloads, transited at "Northwest Milling Points" as named in Item 435 of tariff (except at points named in Item 436 of tariff as amended) under the rules of the western carriers applicable thereat, from Grain or Grain Products originating at points in Trans-Mississippi River Territory, as described in Territorial Directory 3-E, I.C.C. 2008, issued by B.T. Jones, Agent.
	(b) On Grain Products (except Flour as described in Item 412 of tariff as amended) carloads, when transited at "Interior Milling or Malting points", named in Item 430 of tariff under the rules of the western carriers applicable thereat, from Grain originating at points in Trans-Mississippi River Territory as described in Territorial Directory 3-E, I.C.C. 2008, issued by B.T. Jones, Agent, which has moved as grain through "Northwest Milling or Malting Points" named in Item 435 of tariff (except points named in Item 436 of tariff as amended):
	To points in Central Freight Association Territory east of the Illinois-Indiana State Line including Trunk Line arbitrary points as described in CFA Lines Tariff 130-U, I.C.C. 2506, issued by B.T. Jones, Agent, located on and south of the line of the Pennsylvania Railroad from Effner, Ind., to Butler, Ind., through Logansport, Ind., thence New York Central Railroad to Zeuseon, Ohio, thence to
411B Cancels 411B	Wabash Ry., to Toledo, Ohio, thence via the south shore of Lake Erie to and including the western termini of the Eastern Trunk Lines.
	(c) On Grain Products (except Flour, as described in Item 412 of tariff as amended):
	1--On shipments originating at points in Item 431 of tariff, as amended.
	2--On shipments transited at Interior Milling or Malting points named in Item 430 of tariff, under the rules of the western carriers, applicable thereat, from Grain originating at points shown in Item 431 of tariff, as amended.
	3--On shipments originating at points in Trans-Mississippi River Territory as described in Territorial Directory 3-E, I.C.C. 2008, issued by B.T. Jones, Agent, moving through Leeds or Sioux City, Iowa, transited thereat or at points west or north thereof and intermediate thereto, under the rules of the western carriers applicable thereat, and which are subject to combination of local and/or proportion rates to and from Leeds or Sioux City, Iowa: This basis not to apply on traffic moving under through one factor rates except as provided in Paragraph 2:
	To Points in Central Freight Association Territory east of the Illinois-Indiana State Line including Trunk Line arbitrary points as described in CFA Lines Tariff 130-U, I.C.C. 2506, located on and south of the line of the Pennsylvania Railroad from Effner, Ind., to Butler, Ind., through Logansport, Ind., thence New York Central Railroad to Zeuseon, Ohio, thence the Wabash Ry., to Toledo, Ohio,
(D2122) (D2323)	thence via the south shore of Lake Erie to and including the western Termini of the Eastern Trunk Lines.

For explanation of abbreviations, see pages 3 to 5 of tariff.

(74) Applicable only to rates from Chicago, Ill., and points named in Item 423 of tariff.

G R A I N

Supplement 45 to Pere Marquette Grain Tariff No. 5732-G, ICC 4704, Effective January 21, 1934 and remained in effect until cancelled by CFA Tariff No. 535, ICC No. 2790, effective June 28, 1935.

Application of Reshipping Rates
From
Chicago, Ill., to C.F.A.Territory

Apply Rates Under Column B

(Trans-Mississippi)

GRAINS, CARLOADS, as described in Group 1, page 5 of P.M. Tariff No. 5732-G, ICC No. 4704, as amended:

When originating at points in Trans-Mississippi River territory as defined in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282, as amended or reissued, handled under rules governing transit privileges, published in tariffs lawfully on file with the Interstate Commerce Commission, also on through consignments of Grains from Trans-Mississippi River territory, except as otherwise specifically provided herein.

FLOUR, CARLOADS, as described in Group 1, page 5 of P.M. Tariff No. 5732-G, I.C.C. No. 4704, as amended.

(1) When originating at points in Trans-Mississippi River territory, as defined in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282, as amended or reissued, subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.

(2) When milled thereat from Grain originating in Trans-Mississippi River territory, as described above, also on through consignments of Flour from Trans-Mississippi River territory, except as otherwise specifically provided herein.

(3) When transited at Northwest milling or malting points named in Note 1, page 10 of tariff, under the rules of the Western Carriers, applicable thereat, from Grain originating at points in Trans-Mississippi River territory, as defined in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282, as amended or reissued.

(Information Circular 16279)

Effective January 25, 1932 and cancelled by CFA Tariff 535 effective June 28, 1935.

Apply rates under Column C

(Northwest)

GRAINS, CARLOADS, as described in Group 1, page 5 of P.M. Tariff No. 5732-G, I.C.C. No. 4704, as amended.

When originating in the following described territory:

(1) Points in Wisconsin.

(2) Points in the Upper Peninsula of Michigan

(3) Points west of the Minnesota-Wisconsin State Line, except Trans-Mississippi River territory as described in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282, as amended or reissued.

(4) Points in the Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(5) On shipments which arrive by boat-lines at Chicago, Ill., Kewaunee, Milwaukee or Manitowoc, Wis.

Apply rates under Column C

(Northwest) - Continued

FLOUR, CARLOADS, as described in Group 1, page 5 of P.M. Tariff No. 5732-G, I.C.C. No. 4704, as amended.

(1) Except as otherwise provided for herein under Column B, (Trans-Mississippi River) page 8 of tariff, as amended, when milled or malted in transit at Northwest milling or malting points named in Note 1, page 10 of tariff, from Grains originating at points beyond.

(2) When milled or malted in transit at interior milling or malting points named in Note 2, page 10 of tariff, from Grains which originate at points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan; in Wisconsin; the Upper Peninsula of Michigan; and at points west of the Minnesota-Wisconsin State Line and north of Trans-Mississippi River Territory, as defined in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282, as amended or reissued.

(3) When the flour originates at points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan; in the Upper Peninsula of Michigan; in Wisconsin, and at points west of the Minnesota-Wisconsin State Line, which are not included in Trans-Mississippi River Territory, as defined in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282 as amended or reissued.

(4) Also when milled, malted, mixed or reconsigned in transit at Chicago, Ill., Kewaunee, Milwaukee or Manitowoc, Wis., enroute to final destination in accordance with and subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the Grains so milled, malted, mixed or reconsigned originated at points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan; in Wisconsin; the Upper Peninsula of Michigan, and points west of the Minnesota-Wisconsin State Line and north of Trans-Mississippi River Territory, as defined in Agent B. T. Jones' Territorial Directory No. 3-F, I.C.C. No. 2566, C.R.C. No. 1282, as amended or reissued.

Apply rates under Column D

(Except Trans-Mississippi and Northwest)

GRAINS, CARLOADS (as described in Group 1, page 5):

When originating at points from which no joint through rates are in effect, except as provided for under Column B and C; will also apply on Grains originating in same territory, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates named from Chicago, Ill., will also apply from La Crosse and Wellsboro, Ind.

Application of shipping rates account Erie R.R. and C.&.E. R.R., existing prior to effective date of Jones' Tariff 535

(Excerpt from Erie Tariff 182-G, I.C.C. A-6558, Supplement No. 99)

Column B	Grain, as described with minimum Weights in Note 1.	When originating at points in Trans-Mississippi River territory, as described in Territorial Directory No. 3-F, I.C.C. No. 2566, Erie No. 308-D, issued by B.T.Jones, Agent, supplements thereto or successive issues thereof, handled under rules governing transit privileges published in tariffs lawfully on file with the Interstate Commerce Commission, also on through consignments of Grain from Trans-Mississippi River territory, except as otherwise specifically provided herein. Will also apply on #Compound Flour(Self-Rising Flour)and #Flour, made from Grain and/or malt only, when milled or malted at Northwest milling points shown in Note 10, from Wheat originating in Trans-Mississippi River territory. Will also apply on Compound Flour(Self-Rising Flour)and Flour, made from Grain and/or malt only, originating at points in Trans-Mississippi River territory and transited at North-west milling or malting points shown in Note 10. (Inf. 15904, 16536) Will also apply on Compound Flour(Self-Rising Flour)and Flour made from Grain and/or malt only, transited at interior milling or malting points shown in Note 11 from Grain originating in Trans-Mississippi River territory and handled through North-west milling or malting points shown in Note 10. (Inf. 16536) Will also apply on Compound Flour(Self Rising Flour)and Flour made from Grain and/or malt only transited at North-west milling points shown in Note 10, from Grain originating in Trans-Mississippi River territory.
Column C	Grain, as described with minimum Weights in Note 1.	When originating at points in the following described territory: (a) Points in Wisconsin (b) Points in the Upper Peninsula of Michigan. (c) Points west of the Minnesota-Wisconsin State Line not provided for under Column B. (d) Points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan. (e) On shipments which arrive by boat lines at Chicago, Ill.(Inf. 13438)

(Excerpt from Erie Tariff 182-G, I.C.C. A-6558, Supplement No. 56)

Column D	Grain, as described with minimum weights in Note 1.	When originating at points from beyond, except as provided in Columns "B" and "C". Will also apply on Grain originating in same territory, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, or with the Public Service Commission of Indiana.

13

M.C. R.R. Tariff G.F.D. 9297 I. C.C. No. 5882

Effective 6-15-1931

APPLICATION OF PROPORTIONAL OR RESHIPPING RATES FROM CHICAGO, ILL., AND POINTS TAKING SAME RATES AS SHOWN IN RULE No. 9, PAGE 21 (See Note 15, Page 31)

COMMODITY	Minimum Weight	Group	Pages
TRANS-MISSISSIPPI GRAIN **Grain, Carloads**—(as described in Group **A**): When originating at points in Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-E, I. C. C. No. 2008, M. C. R. R. G. F. D. No. 9092-E, supplements thereto or successive issues thereof handled under rules governing transit privileges, published in tariffs lawfully on file with the Interstate Commerce Commission, also on through consignments of grain, from Trans-Mississippi River territory, except as otherwise specifically provided herein.	Per Group A	**D**	32 to 53
NORTH-WEST GRAIN **Grain, Carloads**—(as described in Group **A**): When originating in the following described territory: (1) Points in Wisconsin. (2) Points in the Upper Peninsula of Michigan. (3) Points west of the Minnesota-Wisconsin State Line, except Trans-Mississippi River territory as described in Agent B. T. Jones' Territorial Directory No. 3-E, I. C. C. No. 2008, M. C. R. R. G. F. D. No. 9092-E, supplements thereto or successive issues thereof. (4) Points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan. (5) On shipments which arrive by Boat Lines at Chicago, Ill., originating at any of the points in the above described territory.	Per Group A	**E**	32 to 53
RESHIPPING GRAIN **Grain, Carloads**—(as described in Group **A**): When originating at points from beyond, except as provided for under Groups **D** and **E**, and will also apply on Grain originating in same territory, handled under rules governing transit privileges as published in tariffs lawfully on file with the Interstate Commerce Commission.	Per Group A	**F**	32 to 53
NORTH-WEST GRAIN PRODUCTS **Grain Products, Carloads**—(as described in Group **B**): (1) *Except as otherwise provided for herein under Group H*, when milled or malted in transit at Northwest milling or malting points named in Note 14, page 31, from Grain originating at points beyond (Inf. 11363) (2 [28]) When milled or malted in transit at Interior milling or malting points named in Note 13, Page 30, from grain which originates in Wisconsin, the Upper Peninsula of Michigan and at points west of the Minnesota-Wisconsin State Line and north of Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-E, I. C. C. No. 2008, M. C. R. R. G. F. D. No. 9092-E, supplements thereto or successive issues thereof. (3 [28]) When the Grain Products originate at points in the Upper Peninsula of Michigan, in Wisconsin and at points west of the Minnesota-Wisconsin State Line, which are not included in Trans-Mississippi River territory, as described in Agent B. T. Jones' Territorial Directory No. 3-E, I. C. C. No. 2008, M. C. R. R. G. F. D. No. 9092-E, supplements thereto or successive issues thereof. (4 [28]) Also when milled, malted, mixed or reconsigned in transit at Chicago, Ill., and points taking same rates as shown in Rule No. 9, page 21, or to be milled, malted, mixed or reconsigned at points east thereof on The Michigan Central R. R., enroute to final destination in accordance with and subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the grain so milled, malted, mixed or reconsigned originated in Wisconsin, the Upper Peninsula of Michigan, and points west of the Minnesota-Wisconsin State Line and North of Trans-Mississippi River territory, as described in Agent B. T. Jones' territorial Directory No. 3-E, I. C. C. No. 2008, M. C. R. R.-G. F. D. No. 9092-E, supplements thereto or successive issues thereof.	Per Group B	**G**	32 to 53

[28] Will also apply when the Grain originates at points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

APPLICATION OF PROPORTIONAL OR RESHIPPING RATES FROM CHICAGO, ILL. AND POINTS TAKING SAME RATES AS SHOWN IN RULE No. 9, PAGE 21—Concluded. (See Note 15, Page 31).

COMMODITY	Minimum Weight	Group	Pages
TRANS-MISSISSIPPI GRAIN PRODUCTS **Grain Products, Carloads** (as described in Group "**B**"): Grain Products milled or malted at Chicago, Ill., and points taking Chicago, Ill. rates as shown in Rule No. 9, page 21, or to be milled or malted in transit at stations east thereof on The Michigan Central R. R. from grain originating in Trans-Mississippi River territory (see Note 1 below); also on through consignments of Grain Products from Trans-Mississippi River territory (see Note 1 below) except as otherwise specifically provided herein. Will also apply on Grain Products milled or malted in transit at Northwest milling or malting points named in Note 14, page 31, from Grain originating at points in Trans-Mississippi River territory (see Note 1 below) (Inf 10677) **Note 1.**—Trans-Mississippi River territory as described in Agent B T Jones' Territorial Directory No 3-E, I C C No 208, M C R R G F D No 9092-E, supplements thereto or successive issues thereof.	Per Group B	**H**	32 to 53
RESHIPPING GRAIN PRODUCTS **Grain Products, Carloads** (as described in Group "**B**"): (1) When consigned or billed through from points from beyond, except traffic subject to rates under group "**G**" (northwest), and traffic subject to Trans-Mississippi River rates under Group "**H**." (2) When originating at points from beyond, except on traffic originating in Trans-Mississippi River Territory (See Group "**H**") or Northwest (See Group "**G**") and the traffic is handled under the rules governing milling, malting, mixing, or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission. (3) On Grain Products (as described in Group "**B**"), milled, malted, mixed or reconsigned in transit at Chicago, Ill., and points taking Chicago, Ill. rates as shown in Rule No. 9, page 21, or to be milled, malted, mixed or reconsigned at stations east thereof on The Michigan Central R. R., subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the Grains originated in the above described territory and except from points from beyond.	Per Group B	**I**	32 to 53

INTERIOR MILLING AND MALTING POINTS REFERRED TO IN PARAGRAPH (2), GROUP G, PAGE 27

Akron	Ia.	Denison	Ia.	Lomira	Wis.	Ripon	Wis.
Algona	Ia.	De Pere	Wis.	Loyal	Wis.	River Falls	Wis.
Alma	Wis.	Des Moines	Ia.	Luxemburg	Wis.	Rochelle	Ill.
Alton	Ia.	Dixon	Ill.	Manawa	Wis.	Rockdale	Ia.
Ames	Ia.	Dubuque	Ia.	Manchester	Ia.	Rockford	Ill.
Amherst	Wis.	Eagle	Wis.	Manitowoc	Wis.	Rock Valley	Ia.
Amherst Jct	Wis.	Eau Claire	Wis.	Manning	Ia.	Rubicon	Wis.
Appleton	Wis.	Elgin	Ill.	Marinette	Wis.	St. Charles	Ill.
Arcadia	Wis.	Fond du Lac	Wis.	Marshfield	Wis.	Savanna	Ill.
Aurora	Ill.	Fort Dodge	Ia.	Masco	Wis.	Seymour	Wis.
Baraboo	Wis.	Fountain City	Wis.	Mauston	Wis.	Sheboygan	Wis.
Barton	Wis.	Fox Lake	Wis.	Mayville	Wis.	Sheldon	Ia.
Belmond	Ia.	Freeport	Ill.	Menomonie	Wis.	Sioux City	Ia.
Beloit	Wis.	Fulton	Ill.	Merrill	Wis.	Sioux Falls	S. D.
Berlin	Wis.	Galesville	Wis.	Milwaukee	Wis.	Sparta	Wis.
Black River Falls	Wis.	Garber	Ia.	Missouri Valley	Ia.	Spencer	Ia.
Blair	Wis.	Grafton	Wis.	Neenah	Wis.	Spencer	Wis.
Burkhardt	Wis.	Green Bay	Wis.	Neillsville	Wis.	Stevens Point	Wis.
Burlington	Wis.	Greenleaf	Wis.	Neola	Ia.	Stoughton	Wis.
Cadott	Wis.	Harlan	Ia.	New Richmond	Wis.	Thiensville	Wis.
Cedarburg	Wis.	Hartford	Wis.	N. Wisconsin Jct	Wis.	Tomah	Wis.
Cedar Falls	Ia.	Hudson	Wis.	Oconomowoc	Wis.	Union Center	Wis.
Cedar Rapids	Ia.	Humboldt	Ia.	Oconto	Wis.	Valley Jct	Wis.
Charter Oak	Ia.	Independence	Ia.	Oostburg	Wis.	Valley Springs	S. D.
Cherokee	Ia.	Iola	Wis.	Oshkosh	Wis.	Waterloo	Ia.
Chilton	Wis.	Iron Ridge	Wis.	Ossian	Ia.	Waterloo	Wis.
Chippewa Falls	Wis.	Janesville	Wis.	Peoria	Ill.	Watertown	Wis.
Cleveland	Wis.	Jefferson	Wis.	Pepin	Wis.	Waukesha	Wis.
Clinton	Ia.	Jefferson Jct	Wis.	Peterson	Ia.	Waupaca	Wis.
Columbus	Wis.	Kenosha	Wis.	Portage	Wis.	Wausau	Wis.
Danbury	Ia.	Kewaskum	Wis.	Port Washington	Wis.	West Bend	Wis.
Darien	Wis.	Kewaunee	Wis.	Prairie du Chien	Wis.	Westfield	Wis.
Davenport	Ia.	Lake Mills	Wis.	Princeton	Wis.	Weyauwega	Wis.
Decorah	Ia.	Leeds	Ia.	Reedsburg	Wis.	Wisconsin Rapids	Wis.
Delavan	Wis.	Le Mars	Ia.	Richland Center	Wis.	Wonewoc	Wis.

(Inf. 720, 935)

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Note	EXPLANATION OF NOTES—Concluded

NORTHWEST MILLING AND MALTING POINTS REFERRED TO IN PARAGRAPH (1), GROUP G, PAGE 27

Aberdeen S. D.	Faribault Minn.	Madison S. D.	St. Peter Minn.
Albert Lea Minn.	Faulkton S. D.	Madison Lake Minn.	Sauk Center Minn.
Alden Minn.	Foley Minn.	Maitland Minn.	Selby S. D.
Anoka Minn.	Frankfort S. D.	Manchester Minn.	Shakopee Minn.
Appleton Minn.	Franklin Minn.	Mankato Minn.	Sheffield Mill Minn.
Arlington Minn.	Frederick S. D.	Marietta Minn.	Short Line Park Minn.
Arlington S. D.	Gaylord Minn.	Marshall Minn.	Sisseton S. D.
Ashton S. D.	Gettysburg S. D.	Melrose Minn.	Sleepy Eye Minn.
Austin Minn.	Gibbon Minn.	Merriam Jct Minn.	Smithville S. D.
Baltic S. D.	Glencoe Minn.	Milbank S. D.	South Stillwater Minn.
Belle Plaine Minn.	Goodhue Minn.	Minneapolis Minn.	Spirit Lake Minn.
Belview Minn.	Graceville Minn.	Minnesota Transfer Minn.	Springfield Minn.
Benson Minn.	Granite Falls Minn.	Mitchell S. D.	Stewart Minn.
Bird Island Minn.	Green Isle Minn.	Montevideo Minn.	Stillwater Minn.
Blooming Prairie Minn.	Greenland Minn.	Montgomery Minn.	Strandsburg S. D.
Blue Earth Minn.	Groton S. D.	Morgan Minn.	Superior Wis.
Bowdle S. D.	Hamburg Minn.	Morris Minn.	Toronto S. D.
Boyd Minn.	Hanley Falls Minn.	Morristown Minn.	Thompson Minn.
Bristol S. D.	Hanska Minn.	Morton Minn.	Vienna S. D.
Britton S. D.	Hartland Minn.	Mt. Vernon S. D.	Volin S. D.
Brookings S. D.	Hastings Minn.	Newark S. D.	Wabasha Minn.
Butterfield Minn.	Hazel Run Minn.	New London Minn.	Waconia Minn.
Canby Minn.	Hector Minn.	New Prague Minn.	Walnut Grove Minn.
Cannon Falls Minn.	Henderson Minn.	New Richland Minn.	Warner S. D.
14 Canton Minn.	Hixon Minn.	New Ulm Minn.	Warsaw Minn.
Carver Minn.	Hosmer S. D.	Northfield Minn.	Waseca Minn.
Cascade Minn.	Howard S. D.	Norwood Minn.	Waterford Minn.
Centerville S. D.	Huron S. D.	Odessa Minn.	Watertown S. D.
Chaska Minn.	Ipswich S. D.	Olivia Minn.	Waterville Minn.
Clarkfield Minn.	Jackson Minn.	Oneota Minn.	Watiera Minn.
Clayton Minn.	Janesville Minn.	Ortonville Minn.	Waverly S. D.
Cologne Minn.	Jefferson S. D.	Osakis Minn.	Weaver Minn.
	Jordan Minn.	Otisco Minn.	Webster S. D.
Dawson Minn.	Kasson Minn.	Owatonna Minn.	Wells Minn.
Delhi Minn.	Kenyon Minn.	Parker S. D.	Welsh Minn.
Dell Rapids S. D.	Kilkenny Minn.	Pipestone Minn.	Westbrook Minn.
Dodge Center Minn.	Klossner Minn.	Plainview Minn.	West Concord Minn.
Duluth Minn.	La Crosse Wis.	Plato Minn.	Wheaton Minn.
Dundas Minn.	La Fayette Minn.		White Rock S. D.
	Lake Benton Minn.	Redfield S. D.	Willmar Minn.
Echo Minn.	Lake City Minn.	Red Wing Minn.	Wilson S. D.
Edgeley N. D.	Lake Crystal Minn.	Redwood Minn.	Windom Minn.
Eldridge Jct Minn.	Lakefield Minn.	Redwood Falls Minn.	Winnebago Minn.
Ellendale N. D.	Lakeville Minn.	Revillo S. D.	Winona Minn.
Elmore Minn.	Lanesboro Minn.	Rochester Minn.	Winthrop Minn.
Elysian Minn.	Langford S. D.	Rushford Minn.	Wood Lake Minn.
Eureka S. D.	Le Roy Minn.	St. Cloud Minn.	Woonsocket S. D.
Eyota Minn.	Le Sueur Minn.	St. James Minn.	Worthington Minn.
Fairfax Minn.	Madelia Minn.	St. Louis Park Minn.	Yankton S. D.
Fairmont Minn.	Madison Minn.	St. Paul Minn.	Young America Minn.

(Inf. 720, 935, 6437)

15 Reshipping or proportional rates are applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points from beyond in connection with the inbound carrier via the reshipping point from original shipping point to final destination; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom. These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Supp 53 Effective 5-10-1935

APPLICATION OF PROPORTIONAL OR RESHIPPING RATES FROM CHICAGO, ILL., AND POINTS TAKING SAME RATES AS SHOWN IN RULE NO. 9, PAGE 21 OF TARIFF
(See Note 15, page 31 of tariff)

COMMODITY	Minimum Weight	Group	Pages of Tariff, as amended
Page 27 of tariff, as amended by page 3 of I. C. C. Supp. No. 45. Make the following Change: **(58)TRANS-MISSISSIPPI GRAIN AND FLOUR** **Grain, Carloads**—(as described in Group **A**): When originating at points in Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof, handled under rules governing transit privileges, published in tariffs lawfully on file with the Interstate Commerce Commission, also on through consignments of grain, for Trans-Mississippi River Territory, except as otherwise specifically provided herein.	Per Group **A**	**D**	
Also Flour Compound (Self-rising Flour) and Flour, made from grain and/or malt only: (1) When originating at points in Trans-Mississippi River Territory, as described above, subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission. (2) When milled or malted at Chicago, Ill., and points taking Chicago, Ill., rates as shown in Rule No. 9, page 21 of tariff, or to be milled or malted in transit at stations east thereof on The Michigan Central R. R. from Grain originating in Trans-Mississippi River Territory, as described above, also on through consignments of Flour from Trans-Mississippi River Territory, as described above, except as otherwise specifically provided herein. (3) When milled or malted in transit at Northwest Milling or Malting points named in Note 14, page 31 of tariff, from Grain originating at points in Trans-Mississippi River Territory, as described above. (4) When originating at points in Trans-Mississippi River Territory, as described above and transited at Northwest milling or malting points named in Note 14, page 31 of tariff.	(57)	**D**	32 to 53
Page 27 of tariff. Change: **(58)NORTHWEST GRAIN AND FLOUR** **Grain, Carloads**—(as described in Group **A**): When originating in the following described territory: (1) Points in Wisconsin, (2) Points in the Upper Peninsula of Michigan, (3) Points west of the Minnesota-Wisconsin State Line, except Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566, (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof, (4) Points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan, (5) On shipments which arrive by Boat Lines at Chicago, Ill.	Per Group **A**	**E**	
Also **Flour,** compound (self-rising flour) and **Flour,** made from grain and/or malt only: (1) Except as otherwise provided for herein under Group D, when milled or malted in transit at Northwest milling or malting points named in Note 14, page 31 of tariff, from Grain originating at points beyond. (2) When milled or malted in transit at interior milling or malting points named in Note 13, page 30 of tariff, from grain which originates at points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan; in Wisconsin; the Upper Peninsula of Michigan and at points west of the Minnesota-Wisconsin State Line and north of Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F) supplements thereto or successive issues thereof. (3) When the Flour originates at points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan; in the Upper Peninsula of Michigan; in Wisconsin and at points west of the Minnesota-Wisconsin State Line, which are not included in Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof. (4) Also when milled, malted, mixed or reconsigned in transit at Chicago, Ill., and points taking same rates as shown in Rule No. 9, page 21 of tariff, or to be milled, malted, mixed or reconsigned at points east thereof on The Michigan Central R. R., enroute to final destination in accordance with and subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the grain so milled, malted, mixed or reconsigned originated at points in the Dominion of Canada, viz.: all points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan; in Wisconsin; the Upper Peninsula of Michigan, and points west of the Minnesota-Wisconsin State Line and North of Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof.	(57)	**E**	32 to 53

For explanation of reference marks, see pages 9, 10 and 11 hereof.

APPLICATION OF PROPORTIONAL OR RESHIPPING RATES FROM CHICAGO, ILL., AND POINTS TAKING SAME RATES AS SHOWN IN RULE No. 9, PAGE 21 OF TARIFF

(See Note 15, page 31 of tariff)

COMMODITY	Minimum Weight	Group	Pages of Tariff, as amended
Page 27 of tariff. Change: **(3) NORTHWEST GRAIN PRODUCTS** **Grain Products, Carloads**—(as described in Group **B**): also (2) **Feed, animal, poultry or pigeon**—(as described in Group **C**): (1) Except as otherwise provided for herein under Group H, when milled or malted in transit at Northwest milling or malting points named in Note 14, page 31 of tariff, from Grain originating at points beyond. (Inf. 11363) (2) (R) When milled or malted in transit at Interior milling or malting points named in Note 13, page 30 of tariff, from grain which originates in Wisconsin, the Upper Peninsula of Michigan and at points west of the Minnesota-Wisconsin State Line and north of Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof. (3) (R) When the Grain Products originate at points in the Upper Peninsula of Michigan, in Wisconsin and at points west of the Minnesota-Wisconsin State Line, which are not included in Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof. (4) (R) Also when milled, malted, mixed or reconsigned in transit at Chicago, Ill., and points taking same rates as shown in Rule No. 9, page 21 of tariff, or to be milled, malted, mixed or reconsigned at points east thereof on The Michigan Central R. R., enroute to final destination in accordance with and subject to the rules and charges governing milling, malting, mixing or reconsigning privileges as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the grain so milled, malted, mixed or reconsigned originated in Wisconsin, the Upper Peninsula of Michigan, and points west of the Minnesota-Wisconsin State Line and North of Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof.	Per Group B (except as noted)	G	32 to 53
Page 28 of tariff. Make the following Change: **(3) TRANS-MISSISSIPPI GRAIN PRODUCTS** **Grain Products, Carloads**—(as described in Group **B**): Grain Products milled or malted at Chicago, Ill., and points taking Chicago, Ill., rates as shown in Rule No. 9, page 21 of tariff, or to be milled or malted in transit at stations east thereof on The Michigan Central R. R. from grain originating in Trans-Mississippi River Territory (see Note 1 below); also on through consignments of Grain Products from Trans-Mississippi River Territory (see Note 1 below), except as otherwise specifically provided herein. Will also apply on Grain Products milled or malted in transit at Northwest milling or malting points named in Note 14, page 31 of tariff from Grain originating at points in Trans-Mississippi River Territory (see Note 1 below). (Inf. 10677) Will also apply on Grain Products originating at points in Trans-Mississippi River Territory (see Note 1 below) and transited at Northwest milling or malting points named in Note 14, page 31 of tariff. **Note 1.**—Trans-Mississippi River Territory, as described in Agent B. T. Jones' Territorial Directory No. 3-F, I. C. C. No. 2566 (M. C. R. R., G. F. D. No. 9092-F), supplements thereto or successive issues thereof.	Per Group B	H	32 to 53

EXPLANATION OF NOTES

GT. Ry Tariff 324 J, ICC GTLW No A 2349
Effective Sept 15-1921

APPLICATION OF RATES—Continued.

Rates to Intermediate Points	Except as otherwise specifically provided herein, the rates to any point to which rates are not shown in this tariff, which point is directly between two points to which rates are published herein, will be the same as the rates named in this tariff to such two points, unless the rates to such two points are not the same, in which case the rate to the Intermediate Point will be that applicable to the point to which the higher rates are published herein. If the station is not located between two points to which rates are published herein from the origin station of the shipment, the rate will be the same as to the next named point beyond on the same line. This application will not apply to points on the Buffalo, Rochester and Pittsburgh R. R.
Mixed carloads of Grain, Grain Products and By-Products	Rates named herein under Columns "H" and "I" will also apply on carload quantities of a mixture of By-Products of Grain as described in List 3, page 5, with Grain and (or) Grain Products as described in Lists Nos. 1 and 2, pages 4 and 5, providing that fifty (50%) percent of such mixture consists of By-Products of Grain subject to minimum weight of 40,000 lbs.
Marked Capacity of Cars	For marked capacity of cars, see G. P. Conard's Equipment Register, I. C. C. No. 179, C. R. C. No. 179, or reissues thereof.

Note A.—Rates named under **Column A** will apply on shipments of **Grain and Grain Products,** carloads, as named in List Nos. 1 and 2, pages 4 and 5, originating locally at Chicago, Chicago Lawn, Elsdon, Hayford, Evergreen Park, Mt. Greenwood, Blue Island, Harvey and Thornton Jct., Ill.; also locally at Milwaukee, Wis.

Note B.—Rates named under **Column B** will apply on shipments of **Grain,** carloads, as named in List No. 1, page 4, originating at points in "Trans-Mississippi River" territory, as described in C. F. A. T. B. Territorial Directory No. 3-D, Agent B. T. Jones' I. C. C. No. 1151, C. R. C. No. 750, G. T. L. W. Tariff No. 666-D, supplements thereto or reissues thereof, handled under rules provided for in following tariffs, supplements thereto or reissues thereof:

Agent B. T. JONES'		G. T. L. W.
I. C. C. No.	C. R. C. No.	Tariff No.
1628	.....	683-C
1800	.....	544-D

Also on shipments consigned through to destinations named herein not handled under rules provided in above mentioned tariffs.

Note C.—Rates named under **Column C** will apply on **Grain Products,** carloads, as named in **List No. 2,** pages 4 and 5, originating at points in Trans-Mississippi River territory defined under Note B, and will also apply on **Grain Products,** carloads, milled or malted, in transit at Chicago, Chicago District stop-over points or Milwaukee, Wis., as provided in the following tariffs issued by Agent B. T. Jones, supplements thereto or reissues thereof:

I. C. C. No. 1812, G. T. L. W. Tariff No. 545-D.
I. C. C. No. 1792, G. T. L. W. Tariff No. 539-G.

from grain originating at points in Trans-Mississippi River territory defined under Note B.

Note D.—Rates named under **Column D** will apply on **Grain,** carloads, as named in **List No. 1,** page 4, originating at points in Wisconsin,
Upper Peninsula of Michigan,
Territory West of the Minnesota-Wisconsin State Line (except points in Trans-Mississippi River territory as defined under Note "B"), points in Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan from which no joint through rates are in effect.
Will also apply on shipments of **Grain,** carloads, as named in **List No. 1,** page 4, originating in the above named territories which arrives at Chicago or Milwaukee by boat.

On shipments accorded privileges as provided for in following tariffs, supplements thereto or reissues thereof:

Agent B. T. JONES'		G. T. L. W.	Agent B. T. JONES'		G. T. L. W.
I. C. C. No.	C. R. C. No.	Tariff No.	I. C. C. No.	C. R. C. No.	Tariff No.
1628	.....	683-C	1800	.....	544-E

evidence as to the origin of the **Grain** must be furnished by surrender of Western or Southern carriers' freight bills.

APPLICATION OF RATES—Concluded

Note E.—Rates named under **Column E** will apply on **Grain Products,** carloads, as named in **List No. 2,** pages 4 and 5, and on Feed, Animal, Poultry or Pigeon (prepared, not condimental or medicinal) when not less than 60% of the ingredients thereof consist of articles enumerated in list of articles taking Grain, Grain Products or By-Products of Grain Rates, as specified herein.

(a) When milled or malted in transit at points named in Group No. 3 on page 13, from grain originating in Wisconsin, the Upper Peninsula of Michigan and at points, West of the Minnesota-Wisconsin State Line and North of the Trans-Mississippi River territory as described in C. F. A. T. B. Territorial Directory No. 3-D, I. C. C. No. 1151, G. T. L. W. tariff No. 666-D, supplements thereto or reissues thereof, except when originating at points from which joint through rates are in effect; will also apply when the Grain Products originate at points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan. (See Note 2, below).

(b) When milled or malted in transit at points named in Group No. 4 on page 13, from grain originating at points from which no joint through rates are in effect. (See Note 3, below).

(c) When milled, malted, mixed or reconsigned in transit at Chicago, Chicago District Stop-over points or Milwaukee, Wis., under the provisions of the following tariffs issued by Agent B. T. Jones, supplements thereto or reissues thereof:

I. C. C. No. 1812, G. T. L. W. Tariff No. 545-D.
I. C. C. No. 1790, G. T. L. W. Tariff No. 591-A.
I. C. C. No. 1792, G. T. L. W. Tariff No. 539-G.

from grain originating in Wisconsin, the Upper Peninsula of Michigan, west of the Minnesota-Wisconsin State Line and North of the Trans-Mississippi River Territory as described in C. F. A. T. B. Territorial Directory No. 3-D, I. C. C. 1151, G. T. L. W. Tariff No. 666-D, supplements thereto or reissues thereof, from which no joint through rates are in effect. Will also apply when the Grains originate at points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(d) When Grain products originate at points in Wisconsin, the Upper Peninsula of Michigan and points west of the Minnesota-Wisconsin State Line (from which no joint through rates are in effect), and which are not included in Trans-Mississippi River Territory as described in C. F. A. T. B. Territorial Directory No. 3-D, I. C. C. 1151, G. T. L. W. Tariff No. 666-D, supplements thereto or reissues thereof. Will also apply when the Grain Products originate at points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 2.—Transfer bills from western connections must show origin of grain and station at which milled or malted and bear notation "Milled in transit," or "Malted in transit" (as the case may be), and charges up to Chicago, Chicago Junctions or Milwaukee, must be prepaid or transfer bills must show "Free account transit." (See Note 4, below).

Note. 3.—Transfer bills from western connections must show station at which milled or malted and bear notation "milled or malted in transit," and charges up to Chicago, or Chicago Junctions or Milwaukee must be prepaid or transfer bills must show "Free account transit." (See Note 4, below).

Note 4.—If the provisions of Notes 2 and 3 are not complied with, the local rates as named herein will apply East of Chicago, Chicago Junctions or Milwaukee.

Note F.—Rates named under **Column F** will apply as reshipping or proportional rates on **Grain,** carloads, as named in **List No. 1,** page 4, originating at points from which no joint through rates are in effect, which are not provided for under Notes B and D.

Will also apply on **Grain,** carloads, as named in **List No. 1,** page 4, originating at points in the same territory handled under the provisions of track or transit grain rules provided for in the following tariffs, supplements thereto or reissues thereof:

Agent B. T. JONES'		G. T. L. W.	Agent B. T. JONES'		G. T. L. W.
I. C. C. No.	C. R. C. No.	Tariff No.	I. C. C. No.	C. R. C. No.	Tariff No.
1628	.....	683-C	1800	.....	544-E

Note G.—Rates named under **Column G** will apply as reshipping or proportional rates on **Grain Products,** carloads, as named in **List No. 2,** pages 4 and 5, originating at points from which no joint through rates are in effect, which are not provided for under Notes C and E.

Will also apply on **Grain Products,** carloads, as named in **List No. 2,** pages 4 and 5, milled, malted, mixed or reconsigned in transit at Chicago, Chicago District stop-over points or Milwaukee, Wis., under the provisions of the following tariffs issued by Agent B. T. Jones, supplements thereto or reissues thereof, from grain originating at points from which no joint through rates are in effect, which are not provided for under Notes C and E.

I. C. C. No. 1812, G. T. L. W. Tariff No. 545-D.
I. C. C. No. 1790, G. T. L. W. Tariff No. 591-A.
I. C. C. No. 1792, G. T. L. W. Tariff No. 539-G.

Will also apply on shipments of **Grain Products,** as named in **List No. 2,** pages 4 and 5, arriving at Chicago, Ill., or Milwaukee, Wis., by boat, originating at points from which no joint through rates are in effect, which are not provided for under Notes C and E.

Note H.—Rates named under **Column H** will apply on **By-Products of Grain,** carloads, named in **List No. 3,** page 5, originating locally at Blue Island, Chicago, Chicago Lawn, Elsdon, Evergreen Park, Hayford, Harvey, Thornton Junction, Ill., and Milwaukee, Wis. (See Exception).

Exception.—Will not apply on Feed, animal, poultry or pigeon, as described on page 5 of tariff, originating locally at Milwaukee, Wis., for rates, see Note I.

Note I.—Rates named under **Column I** will apply on **By-Products of Grain,** carloads, named in **List No. 3,** page 5, originating at points from which no joint through rates are in effect, also on shipments waybilled to Chicago or Milwaukee, free (or prepaid), account transit. Rates named under Column I will also apply on Feed, animal, poultry or pigeon, as described on page 5 of tariff, originating locally at Milwaukee, Wis.

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The Baltimore and Ohio Railroad Company

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FREIGHT TRAFFIC DEPARTMENT

GRAND CENTRAL STATION

CHICAGO

R. B. KINKAID
GENERAL FREIGHT AGENT
J. A. BEHRLE
GENERAL FREIGHT AGENT
J. H. WALKMEYER
ASSISTANT GENERAL FREIGHT AGENT
J. H. KUNTZ
ASSISTANT GENERAL FREIGHT AGENT
F. L. SCHLOTTERER
ASSISTANT GENERAL FREIGHT AGENT
P. K. WALDEN
LIVE STOCK AGENT

& 98

March 13th, 1940
File F-I&S Dkt. 4718

Mr. Ulysses Butler, Chief Examiner
Interstate Commerce Commission
Washington, D.C.

Dear Sir:

Referring further to my letter of February 28th in regard to certain exhibits prepared in connection with I.& S. docket 4718.

My attention has now been called, by Mr. W. V. Wheat, Traffic Manager of the Peoria Board of Trade to an error made in connection with C.F.A. Information Circular 21911, dated April 13, 1937, which was the third page of the first exhibit referred to in my letter of February 28th. Following the words "or State Commissions" a quotation mark should be shown the same as in connection with Information Circulars 14287 and 14388.

My third exhibit consisted of 20 pages. My attention has now been called by Mr. Belnap, protestants' attorney, to Page 12 of the exhibit applicable in connection with the Erie RR., under Column "C" we did not show an effective date. In connection with this part of the exhibit Column "C" should be shown as becoming effective September 1st, 1932 in Supplement 67 to Erie RR. tariff 182-G, ICC A-6558.

On Page 19 of the exhibit showing excerpts from Grand Trunk Ry. tariff 324-J, ICC A-2349, my attention has also been directed to an omission from Note D as shown on the bottom of the page in connection with that portion reading as follows:

"Will also apply on shipments of grain, carloads, as named in List No. 1, page 4, originating in the above named territories which arrives at Chicago or Milwaukee by boat."

Effective October 3, 1932 in Supplement 37 to the above Grand Trunk Ry. tariff, this portion of Note D was changed to read as follows:

"Will also apply on shipments of Grain, carloads, as named in List No. 1, page 4 of tariff, as amended, which arrive by boat-lines at Chicago, Ill., or Milwaukee, Wis."

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Mr. Ulysses Butler:--

In addition to the above, Mr. Bolnap also requested at the hearing that we show similar information for account of the New York, Chicago & St. Louis RR. and the Wabash Ry., however, we informed Mr. Bolnap on March 1st, with a copy to you, that we did not have the tariffs of those roads in our file. We have since secured copies of the N.K.P. and Wabash tariffs, and we attach Exhibit "A" which shows the information for account of the N.K.P., and Exhibit "B" which shows the information for account of the Wabash, similar to that shown for the other roads in the 20 page exhibit which accompanied our letter of February 28th.

While we appreciate that this information is furnished after the date set by you for the furnishing of the information, Mr. Bolnap is now agreeable that it be incorporated into the record and that this letter be assigned an exhibit number. If that is satisfactory to your Honorable Commission, will you please arrange to give this letter an Exhibit Number and notify all parties of record to whom copies are being sent? Three additional copies are also enclosed for your file.

Yours very truly,

Assistant General Freight Agent

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Mr.Geo.Dyche, Atty.,Pennsylvania RR.,Union Station,Chicago,Ill.
Mr.Leo P.Day, Commerce Counsel,N.Y.C. RR.,Chicago,Ill.
Mr.Nuel D.Bolnap,2106 Field Bldg.,Chicago,Ill.
Mr.John S.Burchmore, 2106 Field Bldg.,Chicago,Ill.
Mr.Robt. N. Burchmore, 2106 Field Bldg., Chicago,Ill.
Mr.David F.Root, c/o Co-Operative Allied Grain Corp.,Morris, Ill.
Mr.C.E.Childe, 924 W.O.W. Bldg., Omaha, Neb.
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Mr.Henry Christianson, 547 W. Jackson Blvd., Chicago, Ill.
Mr. W. H. Blair, c/o Toledo, Peoria & Western RR., Peoria, Ill.
Mr. F. W. Maronn, Commerce Asst., CMStP&P RR., 765 Union Sta., Chicago, Ill.
Mr. Bernard L. Glover, 411 Fairfax Bldg., 101 W. 11th St., Kansas City, Mo.
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Mr. S. H. Benson, 671 Board of Trade, Chicago, Ill.

Mr. Ulysses Butler:--

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Mr.Arthur L. Schier, 250 Park Ave., New York City.
Mr. W.V.Theat, c/o Peoria Board of Trade, Peoria, Ill.
Mr.Wm.T.McArthur, 1212 Board of Trade Bldg., Kansas City, Mo.
Mr. Edwin T. Breen, First Asst. Atty. General of Illinois, Springfield, Ill.
Mr.Ben Schwartz, Asst.Atty.Gen., on behalf of John E. Cassidy, Attorney General of State of Illinois, Springfield, Ill.
Mr.E.B.Smith, Room 1900, 208 So.LaSalle St., Chicago, Ill.
Mr.Y.H.Sparrow, Room 1900, 208 So. LaSalle St., Chicago, Ill.
Mr.C.L.Bruno, c/o Spencer Kellogg & Sons, Inc., Decatur, Ill.
Mr.Geo. R. Watson, 600 Roanoke Bldg., Minneapolis, Minn.
Mr.T.C.Burwell, c/o A.E.Staley Mfg. Co., Decatur, Ill.
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Mr. R.L.Holmes, 309 W. Jackson Blvd., Chicago, Ill.
Mr.J.J.Schimmel, 332 So. LaSalle St., Chicago, Ill.
Mr.L. .Cole, 1463 Railway Exchange Bldg., St.Louis, Mo.
Mr.W.R.McDonald, 160 No. LaSalle St., Chicago, Ill.
Mr.Charles D. Miller, 135 So. LaSalle St., Chicago, Ill.
Halsey McGovern & Willis Crane, c/o U.S.Department of Agriculture, Washington, D.C.

Exhibit No. [illegible]
I&S Docket No. 4719

EXHIBIT "A"

New York, Chicago and St. Louis RR. Co. Tariff GFD No. 15-B, I.C.C. No. 8390, effective March 24, 1932, Page 51:

GRAIN (NORTHWEST)

Note 14 - Rates subject to this note will apply on Grain, Carloads (See Note 1)as follows:

1. Chicago, Ill., rates will apply from Burnham, Ill., Chicago, Ill., Hammond, Ind., Hessville, Ind., Osborn, Ind., Solvay, Ill. and Stony Island, Ill., on traffic originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in the Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 10.

(d) Points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., originating at any of the points in the above defined territory.

GRAIN PRODUCTS (NORTHWEST) FROM CHICAGO, Ill.

Note 15 - Rates from Chicago, Ill., subject to this note, will apply from Burnham, Ill., Chicago, Ill., Hammond, Ind., Hessville, Ind., Osborn, Ind., Solvay, Ill. and Stony Island, Ill., on Grain Products, Carloads (see Note 2), also Feed, Animal, Poultry or Pigeon as described in Note 3, Carloads:

(a) When milled or malted in transit at Northwest Milling or Malting Points named in Note 17, from Grains (see Note 1), originating at points beyond, except as otherwise provided for under Note 40.

(b) When milled or malted in transit at Interior Milling or Malting Points named in Note 18, from Grains (see Note 1), which originate in Wisconsin, the Upper Peninsula of Michigan, at points west of the Minnesota-Wisconsin State Line (except points in Trans-Mississippi River Territory as described in Note 10), also at points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan, except when originating at points beyond.

(c) When the Grain Products originate at points in the Upper Peninsula of Michigan, in Wisconsin, at points west of the Minnesota-Wisconsin State Line (except points in Trans-Mississippi River territory as described in Note 10), also at points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan, except when originating at points beyond.

(d) Also when milled, malted, mixed or reconsigned in transit at Burnham, Ill., Chicago, Ill., Hammond, Ind., Hessville, Ind., Osborn, Ind., Solvay, Ill. and Stony Island, Ill., enroute to final destination in accordance with and subject to the rules and charges governing milling, malting, mixing or reconsigning privileges, as published in tariffs lawfully on file with the Interstate Commerce Commission, provided the Grains so milled, malted, mixed or reconsigned, originated in Wisconsin, the Upper Peninsula of Michigan, at points West of the Minnesota-Wisconsin State Line (except points in Trans-Mississippi River Territory as described in Note 10), also at points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba, and Saskatchewan.

This paragraph was changed in Supplement 9, Page 3, effective September 1, 1932 to read as follows:

(c) On shipments which arrive by Boat Lines at Chicago, Ill.

Exhibit No. _____
I.& S. Docket No. 4718

EXHIBIT "B"

Wabash Railway Company Tariff H-13224, I.C.C. No. 6078, effective September 11, 1926, Page 10:

Column "C"

Rates named in Column "C" are Reshipping rates and will apply on Grain, as described in Item No. 5, originating in the following described territory, from which no through joint rates are in effect.

(a) Points in Wisconsin.
(b) Points in the Upper Peninsula of Michigan.
(c) Points west of the Minnesota-Wisconsin State Line, EXCEPT Trans-Mississippi River Territory. (See Column "B").
(d) Points in the Dominion of Canada, viz: All points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.
#(e) On shipments which arrive by boat lines at Chicago, Ill., originating at points described in above paragraphs (a, b and d).

This paragraph was changed in Supplement 35, Page 7, effective November 25, 1932 to read as follows:

(e) On shipments which arrive by boat lines at Chicago, Ill.

No 175

JUN 24 [illegible]
CHARLES ELMORE CROPLEY
CLERK

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

Civil Action File No. 3725

Consolidated

CARGILL, INCORPORATED, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

Civil Action File No. 3714

JURISDICTIONAL STATEMENT BY DEFENDANTS AND INTERVENING DEFENDANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and the Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago,

Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in the above-entitled causes sought to be reviewed:

A. Statutory Provisions.

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a [Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220].

U. S. C., Title 28, Section 41(28) [Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219].

U. S. C., Title 28, Section 44 [Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, section 1, 43 Stat. 938].

U. S. C., Title 28, Section 47 [Act of October 22, 1913, c. 32, 38 Stat. 220].

U. S. C., Title 28, Section 345 [Act of March 3, 1891, c. 517, section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, section 35, 31 Stat. 85; April 30, 1900, c. 339, section 86, 31

Stat. 158; March 3, 1909, c. 269, section 1, 35 Stat. 838; March 3, 1911, c. 231, sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, section 2, 38 Stat. 804; February 13, 1925, c. 229, section 1, 43 Stat. 938].

B. The Statute of a State, or the Statutes or Treaty of the United States, the Validity of Which Is Involved.

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. Date of the Judgment or Decree Sought To Be Revised and the Date Upon Which the Application for Appeal Was Presented.

The decree sought to be reviewed was entered on April 16, 1942. The petition for appeal was presented and allowed on May 21, 1942, together with the assignment of errors.

D. Nature of Case and of Rulings Below.

This is an appeal from the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered April 16, 1942, enjoining, annulling and setting aside an order of the Interstate Commerce Commission dated December 1, 1941, in the proceeding known as Investigation & Suspension Docket No. 4718, *Grain Proportionals Ex Barge to Official Territory,* 246 I. C. C. 353, 248 I. C. C. 307. The proceeding before the Commission involved the validity of certain tariff provisions restricting the application of proportional rates on grain east of the gateways or rate-break points where such grain arrives at the rate-break point by boat or barge via Illinois waterways. The reports and order of the Commission sustained the validity of the proposed tariff charges.

Two complaints were filed, No. 3725 on December 17 1941, by the Inland Waterways Corporation, and No. 3714 on December 16, 1941, by five elevator companies, pursuant to provisions of section 41 (28) and sections 43 to 48, inclusive, of Title 28 U. S. C. The United States, the Interstate Commerce Commission and six of the railroad companies whose proposed tariffs were involved were named as defendants in each of said complaints. Subsequently, by separate orders of said court, each dated February 6, 1942, the Secretary of Agriculture and A. L. Mechling, doing business as A. L. Mechling Barge Line, were permitted to intervene as parties plaintiff and seven western trunk-line railroad companies were permitted to intervene as parties defendant. By order of the same date, the two complaints were consolidated for hearing and disposition.

The complaints prayed that the Court annul and set aside the order of the Commission vacating its suspension of the tariffs in issue, and enjoin the defendant carriers from putting these tariffs into effect. The cases were heard on final hearing on February 6, 1942, before a court of three judges organized pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 220), at which time the Attorney General appeared in behalf of the United States and filed answers in which he declined to defend the order of the Commission on the ground that to do so would require him to assert a position on behalf of the United States which was being attacked by the head of a coordinate branch of the Executive Department of the Government. The record before the Commission made after extensive hearings was offered and received in evidence and the matter argued orally by the several parties.

The fundamental question involved was whether the Commission erred in holding that the proposed tariff charges as applied to ex-barge grain from the rate-break points were not in contravention of sections 1, 2 and 3 of the Interstate Commerce Act.

Thereafter on April 16, 1942, said court, without rendering an opinion, filed certain findings of fact and conclusions of law and entered its decree enjoining, annulling and setting aside the order of the Commission, and further, enjoining the carriers-defendants from acting upon the authority of the order of the Commission. It is this decree that is here sought to be reviewed. Due to the absence of opinion, it is not clear upon what ground the court found the Commission to have been in error as a basis for final judgment voiding the order, its only conclusion of law with respect to the merits of the controversy being "the order of the Interstate Commerce Commission discriminates against water competition by users of barges."

The question presented by this appeal is a substantial one. It involves the respective powers of the court and the Commission in determining administrative matters of fact where issues of unjust discrimination and undue prejudice are raised. It involves also the interpretation and application of sections 2 and 3 of the Interstate Commerce Act to the rate situation presented to the Commission in the light of the declaration of policy contained in the Transportation Act of 1940. The question presented is substantial also in the sense that its decision will affect large interests over a broad territory and the movement of large volumes of grain and grain products.

E. Cases Sustaining the Supreme Court's Jurisdiction of the Appeal.

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499;

United States v. *Baltimore & Ohio Railroad Company*, 293 U. S. 454;

Florida v. *United States*, 282 U. S. 194;

Beaumont, Sour Lake & Western Railway Company v. *United States*, 282 U. S. 74;

Ann Arbor Railroad Company v. *United States*, 281 U. S. 658;

Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1;

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541;

United States v. *Lowden*, 308 U. S. 225; and
Hudson & Manhattan R. Co. v. *United States*, 313 U. S. 98; and

Interstate Commerce Commission v. *Railway Labor Executives Association*, ... U. S. ....., decided March 2, 1942.

F. Decree and Findings of Fact and Conclusions of Law of the District Court.

Appended to this statement is a copy of the findings of fact and conclusions of law of the District Court and a copy of decree of the said court sought to be reviewed.

We, therefore, respectfully submit that the Su-

preme Court of the United States has jurisdiction of the appeal.

Dated May 21, 1942.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Washington, D. C.,
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Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

APPENDIX TO JURISDICTIONAL STATEMENT.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, Defendant.	No. 3714	Consolidated Cases.
INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	No. 3725	

This cause coming on to be heard and the Court having heard arguments of counsel, and being fully advised in the premises, now makes the following

FINDINGS OF FACT.

(1) Presently, and for many years, trunk line railroads operating to the east from Chicago, Illinois, including the carrier defendants herein, have maintained therefrom to eastern destinations proportional or re-shipping rates on grain and grain products (hereinafter referred to as grain), in carloads, which are and were lower than the local rates on the same commodities from and to the same points. As a representative example, to New York City, New York,

the proportional or reshipping rate is 26 cents per hundred pounds and the local rate is 34.5 per hundred pounds. To destinations east of Buffalo and Pittsburgh the trunk line railroads maintain similar rates, although differing in amounts, all of said rates exhibiting a similar difference of 8.5 cents per hundred pounds between the proportional or reshipping rates, on the one hand, and local rates, on the other. Such proportional or reshipping rates apply upon reshipment from Chicago to grain received at Chicago over any route via a rail or a water transportation line from any origin, from whence the inbound interstate rate via railroad is 8.5 cents per hundred pounds or greater, provided the reshipment takes place within a year after the grain is received at Chicago, and further provided that the billing of the inbound carriers, which is treated as representative of the grain, is recorded with the railroads and is cancelled at the time the grain represented thereby is reshipped. To destinations to the east of Chicago and intermediate to Chicago and Pittsburgh, proportional and reshipping rates lower than local rates are and were also provided. However, to such destinations there were and are three different levels of proportional or reshipping rates, one termed Trans-Mississippi, another Northwest, and another Reshipping. As to grain received at Chicago via rail and reshipped therefrom to said destinations, the application of the Trans-Mississippi, the Northwest, or the Reshipping Proportional or reshipping rate is dependent upon the origin from whence grain moved inbound to Chicago via rail. As to grain received at Chicago via a water transportation line, the Northwest proportional or reshipping rate is applicable, regardless of the origin and regardless of the route of the inbound movement. The local rates of the eastern trunk lines from Chi-

cago to eastern destinations apply on all grain shipped via rail to which the proportional or reshipping rates above described do not by their terms apply.

(2) Grain presently entitled to the proportional or reshipping rates arrives at Chicago via three different characters of transportation services, *i.e.*, (1) via rail; (2) via barge over the Illinois River and connecting waterways and rivers; and (3) via lake steamer over the Great Lakes. The terms "ex-rail," "ex-barge," and "ex-lake," are used as referring to grain received via the respective means just stated, and also to grain that is reshipped upon the cancellation of the ex-rail, ex-barge, and ex-lake inbound billing.

(3) Little or no grain moves into and out of Chicago in continuous through movement. Rather, the inbound service via rail, via barge, or via lake steamer comes to an end by delivery of the grain into an elevator at Chicago, title to the grain commonly passing to a purchaser at that point, and the outbound reshipment comes later as an independent transaction.

(4) The Inland Waterways Corporation, operating the Federal Barge Lines, plaintiff in No. 3725, operates a barge line as a common carrier by water in Interstate Commerce on the Illinois waterways and the Mississippi and Missouri Rivers, and has heretofore transported ex-barge grain to Chicago, which ex-barge grain has been reshipped therefrom at the proportional or reshipping rates above described.

(5) Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, plaintiffs in No. 3714, each operates a general grain business and public elevators at Chicago. In the course of that business, they buy grain received via rail, via barge, and

via lake on the basis of prices delivered Chicago, store that grain in public elevators awaiting sale, and subsequently sell and reship such grain via lake and via rail for consumption in eastern territory.

A. L. Mechling, doing business as A. L. Mechling Barge Lines, his position being the same as that of the Inland Waterways and the Secretary of Agriculture, intervened both before the Interstate Commerce Commission and in this Court.

(6) The purchase of grain by the plaintiffs in No. 3714 at Chicago on a delivered price basis results in imposing on the shipper of the grain the cost incurred in connection with the inbound transportation, and when a particular mode of transportation provides a saving in transportation costs as against some other mode of transportation, that saving accrues to the inbound shipper.

(7) Two of the plaintiffs in No. 3714, *i.e.*, Continental Grain Company and Norris Grain Company, operate elevators on the banks of the Illinois waterways, some of which have no facilities for rail shipments. These plaintiffs accumulate grain at such elevators for shipment to Chicago via barge with a view to storage at that point and subsequent merchandising and reshipment.

(8) The Baltimore and Ohio Railroad Company, Erie Railroad, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and Ohio Railway Company, carrier defendants in the above-entitled causes, are among the eastern trunk lines which maintain the proportional or reshipping rates and the local rates above described.

(9) By tariffs filed with the Interstate Commerce

Commission to become effective October 15, 1939, the carrier defendants and others propose to change their existing tariffs so as to make the above described proportional or reshipping rates maintained by them inapplicable on the reshipment of grain arriving at

inapplicable on the reshipment of grain arriving at

Chicago via the Illinois waterways, the proposal being to continue the application of such proportional or reshipping rates on ex-rail and ex-lake grain. The plaintiffs in these causes, with others, protested this change in rate application on the ground that it would result in rates which would be unreasonable in violation of Section 1 of the Interstate Commerce Act, unjustly discriminatory in violation of Section 2 of said Act, unduly prejudicial and preferential in violation of Section 3(1) of said Act, and unlawfully discriminatory as between defendants' connecting lines in violating of Section 3(4) thereof. Responsive to such protests, the Commission by order of October 14, 1939, suspended the proposed change in rates and instituted an investigation into the lawfulness thereof in a proceeding before it entitled I. & S. Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory. By the order mentioned, the change was suspended until May 15, 1940. The investigation proceedings were not, however, concluded at that time and the defendant carriers voluntarily postponed the effective date of the proposed change until the Commission could conclude its investigation and enter an appropriate order, and to date no change has been made in said rates.

(10) After hearings in said investigation and suspension proceeding, in which the plaintiffs participated as parties thereto, the Commission, by Division 2, issued its report and order of July 31, 1941, officially reported in 246 I. C. C. 353. In that report and order, the Commission concluded that no change in

rates would in fact be produced by the suspended tariff schedules, this on the stated ground that the existing tariff schedules did not make legal provision for the application of proportional or reshipping rates to ex-barge grain. Consistent with that theory of the case, Division 2 entered a conclusion reading:

> "We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates, and find that the schedules under suspension are not shown to be unlawful. An order will be entered vacating the order of suspension, and discontinuing this proceeding."

Pursuant to the finding just quoted, Division 2 of the Commission entered an order vacating and setting aside, as of August 30, 1941, the order of investigation and suspension.

(11) Prior to the effective date of that order, the plaintiffs in No. 3714 filed with the Commission a petition for reconsideration and reargument, and the plaintiff in No. 3725 filed with the Commission a petition for reconsideration, rehearing and reargument, and the Commission postponed the effective date of its order pending action on said petitions.

(12) By report on consideration and order of December 1, 1941, the Commission granted reconsideration and denied reargument and rehearing. In that report on reconsideration, it reversed the prior finding that the proposed tariff schedules did not provide a change in rates, and, in lieu, thereof, found that the proportional rates in issue were and had been legally applicable to ex-barge traffic when certain so-called policing provisions in the tariffs had been complied with.

(13) In its report on reconsideration, the Commission found, upon the merits of the case as follows:

"The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

"On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

• • •

"(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

"The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

"An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered."

And, pursuant to said findings, entered an order vacating and setting aside, as of December 22, 1941, the order originally entered instituting the proceeding, and discontinued the proceeding. Subsequently, the effective date of said order of December 1, 1941, was by orders extended to February 22, 1942.

(14) As preliminary to its ultimate conclusion, the Commission, in its report on reconsideration, found that it would take official notice of the fact that the Federal Barge Lines, and certain other barge lines, had filed their port-to-port grain rates with the Commission since the hearing in the cases, and also found:

"To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to

13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

"To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combinations will be 1.75, 4.75 and 0.75 cents, respectively, lower than the all-rail rates.

"To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the re-shipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5 cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination

from Morris to New York will be 37.25 cents 2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

"To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

"The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul, and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

"Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily

on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations."

(15) The Commission made no finding in its report as to inbound barge rates on ex-barge grain from St. Louis and Kansas City, Missouri, or as to the movement of such ex-barge grain, although the facts as to such rates and such movement were contained in the record before it.

(16) The reference by the Commission to sixth-class rates (27.5 per cent of first class) as having been prescribed or approved as a maximum reasonable basis of rates on grain in official territory referred only to cases involving local rates on grain, and not to cases involving reshipping or proportional rates as applied to ex-rail or ex-water grain.

(17) The distance via barge from Morris, Illinois,

to Chicago, mentioned by the Commission, is substantially the same as the distance via rail from and to the same points.

(18) There is no evidence in the record to support the finding of the Commission that the proposed schedules will not prohibit the movement by barge-rail, even to trunk-line territory. The Court finds as a fact upon the undisputed evidence that the basis on which grain is purchased delivered Chicago or delivered at a river bank elevator for barge movement to Chicago imposes all costs incurred on the inbound move on the producer of the grain; that any saving in inbound costs represented by the difference between the costs via barge and via rail accrues to the producer by way of higher net prices to him; that such saving does not accrue to the Chicago elevator operator so as to be available to him to offset a penalty in railroad rates east of Chicago; that ex-barge, ex-rail and ex-lake grain of the sme species and grade are not only purchased at the same price at any given time but are sold at the same price; that ex-barge, ex-rail, and ex-lake grain are sold at eastern destinations at prices named on a basis delivered at such destinations and such prices are directly predicated on the freight rate from Chicago to destination to which the grain is entitled under the tariffs; that the Chicago elevator operators received no greater profit per bushel in merchandising grain received via barge than in merchandising grain received via rail; that the grain business is done on a margin of a quarter of a cent per bushel, and a difference in price in that amount will affect a sale; that no grain has ever moved from Chicago to the east on the basis of the local rates via rail; that if the proposed tariffs become effective, ex-barge grain cannot be sold in competition with ex-rail and ex-lake

grain for a rail movement to an eastern destination; that if the proposed tariffs become effective, ex-barge grain can move from Chicago only via the lake, and even that avenue of reshipment will not be available to ex-barge grain during the winter months in which navigation is closed on the Great Lakes; that the carrier defendants and other eastern railroads who propose the change did so in the expectation that the ex-barge grain would not move outbound from Chicago via rail; and that the purpose of said carriers in proposing the change was to drive the grain inbound to Chicago off of the water and onto the rails.

(19) The finding of the Commission to the effect that the physical carriage beyond the reshipping point is substantially the same for ex-barge, ex-rail, and ex-lake grain, is supported by the evidence.

(20) At the time of the hearing in the case by the Commission the proportional or reshipping rates in issue before the Commission did not constitute a portion of a through rate of which all factors were on file with the Commission, in so far as the movement of ex-barge and ex-lake grain is concerned.

(21) At the time of the report of the Commission on reconsideration in the case the proportional or reshipping rates which were in issue before the Commission did not constitute a portion of a through rate of which all factors were on file with the Commission, in so far as ex-barge and ex-lake grain moving to Chicago via private or contract carriers or in a tow exempt from regulation under Section 303(b) of Part III of the Interstate Commerce Act is concerned.

(22) The report of Division 2 of July 31, 1941, mentioned certain facts and matters which are not referred to in the report of the Commission on reconsideration of December 1, 1941. These include:—

the history of the Illinois waterways; the principal shipping points along the Illinois waterways and the distance range to Chicago, no mention being made, however, of St. Louis and Kansas City, Missouri, from which the evidence showed a movement of ex-barge grain; the volume of movement of grain moving in and out of Chicago via various modes of transportation; a description of the Illinois grain producing section and available water and rail facilities; a description of the published rail rates into Chicago, including some specially reduced intrastate rates on corn established to meet the competition of the barge lines for the inbound movement; the movement of corn into Chicago over the Illinois waterways; the barge line charges for movements from Illinois producing points to Chicago; the Board of Trade rules affecting the merchandising of grain and showing the penalty imposed on one who delivers under a future contract for rail movement, if such one is unable to accompany the delivery by inbound billing which will entitle the grain to be reshipped on the proportional or reshipping rates to the east; the Chicago elevator capacity; a comparison of barge and rail delivery costs at Chicago showing the increased net prices to the corn producer which are received when the inbound movement is by barge rather than by rail; the situation of inbound truck grain which is not now entitled to reshipment on the proportional or reshipping rates; the efforts of the western lines in meeting inbound barge competition; and a comparison of proportional or reshipping and local rates from Chicago to representative eastern destinations.

In addition, the report contains the following statements regarding a contention of those supporting the proposed change that the present adjustment has adversely affected the all-rail rate structure:—

"The western lines, supported by the respondent eastern lines, also contend that if application of the proportional rates is to be continued on unregulated ex-barge traffic, the result will be a breaking down of the established through grain-rate structure from West to East. The evidence already detailed with respect to the inability of the reduced intrastate rates on corn to accomplish their purpose in meeting the competitive barge charges supports this contention.

* * *

"The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois. See *Corn Grits from Kankakee, Ill. to Battle Creek, Mich.*, 237 I. C. C. 413. If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain-rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

* * *

"The application of the proportional rates here in issue on ex-barge grain has already broken down a portion of the Illinois grain-rate structure to Chicago, and an imminent break-down of the grain-rate structure east of Chicago is also indicated by the evidence. Tariffs on file here show that during the pendency of this proceeding the rates on corn have been substantially reduced within the State of Indiana, as well as from Indiana to Chicago and to certain stations in Ohio."

(23) The breakdown of the rail rate structure referred to by the Commission related to the publication by western lines of intrastate rail rates to Chicago

below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

(24) If the proposed rates become effective, ex-barge grain will pay a greater charge upon reshipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories.

(25) If the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for purchasers of grain at Chicago to purchase ex-barge grain.

(26) If the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

(27) The natural transportation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market. The grain of producers enjoying cheap water transportation is sold delivered at Chicago. The measure of the inbound rate has no effect upon the Chicago price; it only affects the net price to producers. Producers who cannot use water transportation are under no disadvantage whatsoever because of the transportation advantage of other farmers located upon the waterways.

(28) If the order, referred to above, becomes ef-

fective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

(29) The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

(30) The Interstate Commerce Commission, acting by Division 4 thereof, and conformable to the Transportation Act of 1940 (amending the Interstate Commerce Act), on November 6, 1941 made its findings and order, and pursuant thereto a Certificate of Public Convenience and Necessity was issued by the Interstate Commerce Commission to the Intervening Barge Line (A. L. Mechling, doing business as A. L. Mechling Barge Line). As more fully appears therefrom, the Intervening Barge Line is a certified common carrier by water subject to Part III engaged in carriage by barge only, between all points on the Illinois Waterway north of and including Havana, Illinois, (which includes Chicago) of all kinds of grain and soy beans. As also appears from said order of November 6, 1941, the intervening carrier transported soy beans and seven kinds of grain to Chicago, Illinois, in 1939, 1940 and 1941; shipments were also made to Pekin, Illinois, in 1939; after reaching destination the commodities generally continued movement by rail or water carriers to points in other states or foreign countries.

(31) The Interstate Commerce Commission took no evidence addressed to the issue whether the rate

proposal in question is in violation of Section 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 or contrary to the National Transportation Policy enacted by the last said act; but the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

(32) The intervening plaintiff sought to intervene in the proceedings before the Interstate Commerce Commission held by it for investigation of said rate proposal before its order approving said rate proposal became effective and to present evidence before the Interstate Commerce Commission addressed to the issues whether said rate proposal was illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940 and especially Section 3(4) thereof and the new National Transportation Policy, but the Interstate Commerce Commission refused to permit him to do so.

Upon the above and foregoing findings of fact, the Court states the following

Conclusions of Law.

(1) The order of the Interstate Commerce Commission of December 1, 1941, is of a character which this Court is authorized to enjoin and set aside, and this Court has jurisdiction over the subject matter of the suits.

(2) Plaintiffs in the above-entitled causes have an interest and standing which entitles them to bring and maintain these suits.

(3) The carrier defendants were properly joined in these suits and the Court has jurisdiction over said carrier defendants.

(4) The order of the Interstate Commerce Commission discriminates against water competition by the users of barges.

(5) An injunction should issue as prayed for in the bill of complaint.

EVAN A. EVANS,
U. S. Circuit Judge.

WILLIAM H. HOLLY,
U. S. District Judge.

CHARLES WOODWARD,
U. S. District Judge.

DATED: April 16, 1942.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

CARGILL, INCORPORATED, et al., Plaintiffs.
vs.
UNITED STATES OF AMERICA, et al., Defendants.
No. 3714

INLAND WATERWAYS CORPORATION, Plaintiff.
vs.
UNITED STATES OF AMERICA, et al., Defendants.
No. 3725

Consolidated Cases.

DECREE.

And now these cases having come on for hearing upon motions of plaintiffs for preliminary injunction and for final hearing, and the cases having been consolidated by order of this Court, and the cases having been argued by counsel, and the findings of fact and conclusions of law of the court having been entered herein,

IT IS ORDERED, ADJUDGED AND DECREED that the order of the Interstate Commerce Commission of December 1, 1941, entered in the proceeding known as *Investigation & Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory*, be and it is hereby enjoined, annulled and set aside, and that the operation and effect of the said order be and it is

hereby perpetually enjoined, and the defendants, The Baltimore and Ohio Railroad Company, the Erie Railroad Company, The New York Central Railroad Company, The New York, Chicago, and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and Ohio Railway Company, be and they are hereby permanently enjoined and restrained from acting upon the authority of the aforesaid order of the Commission, but said defendants are not restrained or enjoined from filing or posting any rates or tariffs, other than upon the authority of the aforesaid order.

EVAN A. EVANS,
U. S. Circuit Judge.

WILLIAM H. HOLLY,
U. S. District Judge.

CHARLES WOODWARD,
U. S. District Judge.

DATED: April 16, 1942.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 175

INTERSTATE COMMERCE COMMISSION, ET AL.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.,
Appellees.

BRIEF FOR THE ALTON RAILROAD COMPANY AND OTHER WESTERN CARRIERS, APPELLANTS.

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December 16, 1942.

THE DUNHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

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INTERSTATE COMMERCE COMMISSION, ET AL.,
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Appellees.

BRIEF FOR THE ALTON RAILROAD COMPANY AND OTHER WESTERN CARRIERS, APPELLANTS.

OPINIONS BELOW.

The opinion of the specially-constituted District Court (R. 1663), *Cargill, Incorporated, et al. v. United States, et al.*, is reported at 44 F. Sup. 368. The report of the Interstate Commerce Commission, Division 2 (R. 18), Investigation and Suspension Docket No. 4718, is published at 246 I. C. C. 353. The report of the Interstate Commerce Commission on reconsideration (R. 47), Investigation and Suspension Docket No. 4718, is published at 248 I. C. C. 307.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

a. Nature of the Case.

The tariffs of the eastern carriers operating between Chicago and other points in Official Territory (between Chicago and New York, for example) for several years have permitted the application of rail proportional rates to the transportation by rail of grain from Chicago which earlier had arrived in Chicago by Illinois River barges. By tariffs filed with the Commission to become effective December 15, 1939, and later dates, the eastern carriers sought to cancel this application. Upon protest, the Commission entered an order (R. 15) October 14, 1939, suspending the operation of the newly filed tariffs and providing for a hearing concerning the lawfulness thereof. Following the hearing the Commission on December 1, 1941, entered an order (R. 77) vacating its previous suspension order and discontinuing the proceeding.

Some of the Appellees filed their complaints (R. 1, 133) in the District Court seeking to have the Commission's order, by which it vacated its previous suspension and discontinued the proceeding, set aside. The prayers were that upon final hearing a decree be entered by the Court perpetually enjoining and setting aside the operation and effect of said order, and enjoining the carrier defendants from making effective said change in tariffs.

After hearing, the specially-constituted (three-judge) District Court entered a final decree (R. 1677) annulling and setting aside the order (R. 77) of the Commission which vacated its earlier suspension order. (R. 15.) The final decree of the District Court also perpetually enjoined the Baltimore & Ohio Railroad Company and other eastern carriers, parties to the tariffs, from acting upon the sup-

posed authority of the Commission's order thereby annulled and set aside.

b. Date of the Final Decree to Be Reviewed.

This is an appeal from the final decree (R. 1677) entered by the specially-constituted (three-judge) District Court on April 16, 1942.

c. Statutory Provisions Believed to Sustain Jurisdiction.

The jurisdiction of this Court is invoked under U. S. C., Title 28, Sections 47a, 41(28), 44, 47 and 345.

d. Cases Sustaining the Jurisdiction of This Court on Appeal.

United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co., 294 U. S. 499.

United States v. Baltimore & Ohio Railroad Company, 293 U. S. 454.

Florida v. United States, 282 U. S. 194.

Beaumont, Sour Lake & Western Railway Company v. United States, 282 U. S. 74.

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United States v. Louden, 308 U. S. 225.

Hudson & Manhattan R. Co. v. United States, 313 U. S. 98.

Interstate Commerce Commission v. Railway Labor Executives Association, 315 U. S. 373.

e. Probable Jurisdiction Was Noted by This Court on October 12, 1942.

STATEMENT.

The discussion in this brief is for the purpose of emphasizing not only that the lower court, by its final decree (R. 1677) under review on this appeal, has decided administrative issues on the merits the final determination of which Congress has confided to the Commission exclusively, but that also action by the Commission prior to complete administrative adjudication is not reviewable by the courts and that the lower court did not have jurisdiction to entertain the controversy until the administrative remedies had been exhausted.

The great bulk of the grain, almost altogether corn, which comes to Chicago by barge on the Illinois River and ultimately moves to eastern points by rail, originates in the territory around Morris, Illinois, a point on the Illinois River some 60 miles west of Chicago. Upon arrival in Chicago the grain is stored in elevators and later is shipped out when demand arises.

The rail service portion of the so-called barge-rail movement begins at Chicago. There is no consignment through to a destination beyond Chicago. The ultimate consignee and destination of all or any part of a particular barge load are unknown at the time of shipment.

The all-rail rates on grain and other commodities moving from western to eastern points grade down as the distance and service decrease. In this respect the following all-rail rates per 100 pounds are illustrative of the grain-rate adjustment:

From	To New York. All-rail local rates on corn (domestic).
Morris, Ill. (Ex. 5, R. 35)	35.5¢
Chicago (Ex. 5, R. 35)	34.5¢
South Bend, Ind. (Ex. 5, R. 36)	33.0¢
Ft. Wayne, Ind. (Ex. 5, R. 36)	30.0¢
Glenwood, Ind. (just west of Ohio State line, R. 516)	30.0¢
Payne, Ohio (Ex. 5, R. 36)	28.0¢
Lima, Ohio (Ex. 5, R. 36)	26.0¢

The proportional rate on grain to New York from Chicago is 26 cents. (Ex. 8, R. 41.) This proportional rate, in principle, is typical of other such rates from Chicago to eastern points generally. The eastern carriers had permitted the 26-cent proportional rate, in lieu of the 34½-cent local rate, to be applied on grain shipments from Chicago which, at an earlier date, had arrived in Chicago by river barge. By paying the 2.75-cent barge rate to Chicago from Morris and the 26-cent proportional rate to New York from Chicago, the through barge-rail rate by way of Chicago from Morris to New York became 28.75 cents. (R. 47, 53—Report of the Commission on Reconsideration, 248 I. C. C. 307, 310.) The eastern carriers, by filing the suspended tariffs, undertook to cancel the application of their eastbound proportional rates to the transportation of grain from Chicago which previously had arrived in Chicago by river barge.

The report of the Commission by Division 2 (R. 18) and the report of the Commission on reconsideration (R. 47) are made parts of the order (R. 77) lifting the suspension. In the former report, 246 I. C. C. 353, 380, the Commission said that the use of the proportional rates east of Chicago, in combination with the inbound barge rates to make through barge-rail rates, already had broken down a por-

tion of the Illinois grain-rate structure to Chicago and that an imminent break-down of the grain-rate structure east of Chicago also was indicated by the evidence.

To New York, for example, from Chicago the local rate is 34½ cents and from Ft. Wayne, Indiana, the local rate is 30 cents. The local rates from stations between Chicago and Ft. Wayne range from 34½ cents down to 30 cents. From Morris, Illinois, some 60 miles west of Chicago, the local rate is 35½ cents, or 1 cent higher than the Chicago rate.

The 35½-cent rail rate to New York from Morris is not stated in the tariffs as a joint one-factor rate, nor are the rates generally from other points west of Chicago to the east set out in the tariffs as joint one-factor rates. The 35½-cent rate to New York from Morris is a combination rate made up of a 9½-cent rate to Chicago from Morris and a 26 cent proportional rate from Chicago. The 9½-cent rate is stated separately in the tariffs and the 26-cent rate also is stated separately in the tariffs.

The rates from western points generally to New York and to other eastern points are combinations of the separately published proportional rates from Chicago, or from some other such gateway, and the separately published inbound rates to the gateway.

A rail proportional rate, although separately stated, is published to be used in combination as a proportion, part or balance of the through rail rate. The measure or size of a rail proportional rate, either when determined by the carriers or prescribed by the Commission, should be such that, with the measure or size of the inbound rail rate in mind, the resulting through combination rate from origin to final destination will be reasonable, non-discriminatory, non-prejudicial and otherwise comply with the requirements of the Act. (Report of the Commission on Reconsideration, R. 47—248 I. C. C. 307, 311.)

The measure or size of each rail proportional rate from Chicago to the east thus was determined by the carriers or prescribed by the Commission in relation to the measure or size of the inbound rail rates to Chicago. In so determining or prescribing the measure of the rail proportional rates, the measure of the inbound barge rates was not considered because a reasonable non-discriminatory combination barge-rail rate was not the objective.

By the indulgence of the eastern carriers in the practice of permitting the use of the rail proportional rate in combination with the inbound barge rate, the through barge-rail combination rate to New York from Morris was and, because of the lower court's decree, continues to be 28.75 cents. This is considerably less than the corresponding all-rail rate of 35½ cents to New York from Morris.

The real vice, however, in the practice of combining the rail proportional rate from Chicago with an inbound barge rate from Morris to make a through barge-rail rate to New York, for example, is that the resulting through barge-rail rate of 28.75 cents from Morris, a point some 60 miles west of Chicago, is less than the 30-cent rate which the shipper at Ft. Wayne is required to pay, and Ft. Wayne is some 150 miles east of Chicago.

By condoning the practice of arriving at combination rates on barge-rail shipments to New York for export, the combination barge-rail rate from Morris was and continues to be less than the rates required to be paid by shippers located at points east of the Ohio-Indiana State line. (R. 18—Report of the Commission, by Division 2, 246 I. C. C. 353, 374.)

Moreover, the points east of Chicago referred to above, which have rates to New York in excess of the sum of the barge rate from Morris to Chicago and the proportional rate from Chicago to New York, are points intermediate between Chicago and New York, that is, they are points on

rail routes over which the proportional rates from Chicago apply, and they are points through which barge-rail shipments from Morris to New York pass on their way to destination.

Ft. Wayne is on the route of the Pennsylvania Railroad between Chicago and New York. The 26-cent proportional rate to New York from Chicago applies over this route. A Pennsylvania freight train handling grain to New York out of Chicago elevators which theretofore had moved from Morris to Chicago by river barge might pick up grain shipments at Ft. Wayne for the same destination. The Ft. Wayne shipments would pay 30 cents while the barge shipments from Morris, by reason of the unwarranted barge-rail combination, would pay but 28.75 cents. In other words, for 28.75 cents the barge-rail shipments from Morris would receive from Ft. Wayne, a 30-cent rate point, not only the same rail service accorded the Ft. Wayne shipments but, in addition, rail service from Chicago as far as Ft. Wayne and barge service from Morris as far as Chicago.

Tariffs permitting a practice resulting in such inequalities should be changed. The eastern carriers sought to abolish the practice by filing the tariffs in question. In the exercise of its suspension power, the Commission held the schedules in abeyance temporarily, but thereafter revoked its suspension.

In the report by Division 2 (R. 18) and in the report on reconsideration (R. 47), both made parts of the order lifting the suspension (R. 77), the Commission took cognizance of the inequalities in the rate adjustment created by permitting the application of the proportional rates from Chicago in combination with barge rates to Chicago. In this connection, pertinent excerpts from the Commission's reports are set out in the appendix hereto at pages 23 and 24.

SPECIFICATION OF ERRORS.

(1) The District Court erred in annulling and setting aside the Commission's order, in enjoining the operation and effect thereof and in enjoining the eastern carriers from acting upon the authority of said order.

(2) The Court erred in assuming authority to review and set aside the order of the Commission.

(3) The Court erred in assuming that the Commission's order is one the judicial review of which is authorized.

(4) If the jurisdiction of the Court to review is upheld, the Court erred in substituting its judgment for that of the Commission and in not finding that the Commission's determination of the issues before it is final.

SUMMARY OF ARGUMENT.

The Order of the Commission Which the Lower Court Has Reviewed and Set Aside Is Not an Order the Review of Which Is Authorized.

I.

Whether or not the operation of tariffs, when filed, shall be suspended before taking effect is within the Commission's administrative discretion, and the exercise by the Commission of its administrative discretion, either in suspending the tariffs or permitting them to take effect over protest, admittedly is not subject to judicial review because either suspension or failure to suspend is the exercise of the Commission's administrative discretion and because if not suspended although protested, the Act provides for the filing of formal complaints by aggrieved parties to be followed to a conclusion before there is any finality to administrative adjudication.

II.

When the Commission at first suspends tariffs in the exercise of its administrative discretion it has authority, also in the exercise of administrative discretion, to lift the suspension and permit the tariffs to become operative. By the exercise of its administrative discretion in the latter instance the Commission does no more than place the parties in the same position they would have been in, except for lapse of time, had not the tariffs been suspended in the beginning. The lifting of the suspension is not the conclusion of the prescribed administrative procedure to any greater extent than is the failure of the Commission to suspend tariffs before becoming effective. If the tariffs are not suspended before becoming operative the courts may not be invoked, and the only recourse for aggrieved parties is a procedure before the Commission by formal complaint under Sections 13 and 15 of the Act. If the tariffs are suspended before becoming operative and the Commission subsequently lifts the suspension, parties claiming to be aggrieved thereby are in the same position they would have been in had no suspension order been entered, and in such circumstances the Act contemplates the pursuit of the same administrative remedies.

III.

In the present case appellees did not show that, on barge grain moving to New York from Chicago, they were entitled to have applied a rate as low as 26 cents, which is the rate they demanded. But the Commission did not consider that appellees had exhausted their administrative remedies to obtain the relief to which they might show themselves entitled "in a proper proceeding." In this connection, the Commission said:

> "It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper

proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations." (R. 47, 55—Report of the Commission on Reconsideration, 248 I. C. C. 397, 311.)

IV.

An order of the Commission in a suspension case by which it lifts the suspension and discontinues a proceeding is the exercise of its administrative discretion not to interfere in that proceeding with the right of carriers to initiate rates although, immediately after becoming effective, the new rates might be successfully attacked before the Commission. While an order lifting a previous suspension and discontinuing the proceeding is not an order prescribing rates, even an order prescribing rates is not *res judicata*.

V.

The Commission's order lifting a suspension does not grant the carriers the right to file new rates. The statute is the source of the right to initiate rates by filing tariffs. The order is one which neither commands any party to do or refrain from doing anything. It does not finally determine any right or obligation. Parties not satisfied with the new rates have not been deprived of any right. They may secure the full relief to which they can show themselves entitled by pursuing prescribed administrative remedies.

Even If Courts Have Jurisdiction Over an Order Vacating a Suspension and Discontinuing the Proceeding, the Commission's Determination of the Issues Before It in the Present Case Is Final and Beyond the Authority of the Lower Court to Disturb.

ARGUMENT.

Congress, by the Urgent Deficiencies Act as construed by this Court, did not confer jurisdiction in a specially-constituted District Court to annul and set aside an order of the Interstate Commerce Commission vacating an earlier suspension order which the Commission itself had entered.

The administrative procedure before the Commission as prescribed in the Interstate Commerce Act.

The Interstate Commerce Act, Part I (U. S. C., Title 49, outlines the procedure to obtain administrative adjudication of issues over which the Commission has jurisdiction. By Sections 13(1) and 15(1) thereof (U. S. C., Title 49, Secs. 13 and 15) it is provided that any person complaining of anything done or omitted to be done by a common carrier in contravention of the provisions of the Act may apply to the Commission by complaint, and that if the Commission, after hearing, finds that any rate, regulation or practice is in violation of any provisions of the Act, it is authorized and empowered to determine and prescribe the rate, regulation or practice to be thereafter observed.

The Commission has primary jurisdiction of questions relating to the unreasonableness or to the preferential or discriminatory character of rates, regulations and practices of common carriers. Such questions must first be passed upon by the Commission before a court can be invoked. *Rochester Tel. Corp. v. U. S.*, 307 U. S. 125, 139; *Sprout d. Son v. U. S.*, 281 U. S. 249, 258, 259.

Section 6(3) of the Act (U. S. C., Title 49, sec. 6(3)) recognizes the right of carriers to change existing rates and to initiate new rates by filing tariffs, and provides that 30 days' notice must be given to the Commission and to the public of a proposed change or of a proposed new rate un-

less the Commission allows a shorter time. Prior to the date they are published to become effective, the new tariffs are subject to suspension and investigation under Section 15(7) of the Act. (U. S. C., Title 49, Sec. 15(7).) It is specifically provided that the suspension may not be for a longer period than seven months. The proposed rate is to take effect at the end of the seven months' period unless prior thereto the suspension has been lifted, or the proposed rate found not justified.

Whether new tariffs proposing to change rates shall be suspended before taking effect or permitted to take effect is within the Commission's administrative discretion. If the Commission does not suspend, the courts have no power to do so. *Director General* v. *Viscose Co.*, 254 U. S. 498; *Board* v. *Great Northern Railway*, 281 U. S. 412; *Algoma Coal & Coke Co.* v. *U. S.*, 11 Fed. Supp. 487, 495. In *Board v. Great Northern Railway, supra*, at page 429, this Court said:

> "Congress, in 1910, authorized the Interstate Commerce Commission, on the filing of rates by interstate carriers with the Commission, to suspend the operation of the rates for a stated period, and this provision has been continued in later legislation." Interstate Commerce Act, Sec. 15(7); 36 Stat. 552; 41 Stat. 486, 487. This power of suspension was entrusted to the Commission only."

Having administrative discretion to suspend new tariffs or permit them to become operative, the Commission, also in the exercise of administrative discretion, may discontinue its investigation under Section 15(7) and vacate the suspension. Had the Commission for any reason failed to suspend the tariffs in the present case but allowed them to take effect by operation of law, appellees would have had recourse to the Commission only, and by filing a formal complaint. After the Commission lifted its suspension and permitted the tariffs to become operative, appellees

were placed in the same position they would have been in had the tariffs been permitted to become operative without suspension. The lifting of the suspension and the discontinuance of the proceeding are not the conclusion of the prescribed administrative procedure to any greater extent than is the failure of the Commission to suspend tariffs before they become operative.

In 1910 the Act authorized the suspension of new tariffs for a period not exceeding ten months. The existing rates of course remained in effect during the suspension, although at the expiration of the ten months' period the proposed new rates might be found to have been justified with no means available to the carriers for recouping losses in revenue incurred in the interim. With this thought in mind the suspension period later was reduced to five months. (See Sharfman's, *The Interstate Commerce Commission*, Part I, page 202.) The present period of suspension is seven months. If Congress had intended that the courts should have authority to hold new tariffs in abeyance for an indefinite period following the expiration of the statutory seven months' suspension period, or for an indefinite period after the administrative body concludes the new tariffs should be permitted to become operative, specific provisions to that effect would be found in the Act.

On the contrary, Section 15(7) provides that if, after suspension, an order is not made by the Commission within the period of suspension, "the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period." When the Commission does not make an order within the period of suspension a court, under a mandatory provision of this character, is without authority to interfere and prevent new tariffs from going into effect at the end of the suspension period. If a court were authorized to interfere and prevent new tariffs from going into effect after the Commis-

sion has made an order which permits them to become operative, the authority would have been expressly declared by Congress.

Moreover, assumption by a court of authority to hold new tariffs in abeyance beyond the seven months' suspension period, or beyond the time the tariffs are permitted by the Commission to take effect, is inconsistent with the provisions of Section 15(7) requiring speedy and expeditious handling by the Commission of proceedings involving changes in rates, practices, etc.

Appellees have resorted to judicial remedies before pursuing prescribed administrative procedure to a conclusion.

There are many orders of the Commission which do not meet the requirements of reviewability and are not the type of order which Congress made subject to judicial review under the provisions of the Urgent Deficiencies Act. *Columbia Broadcasting System v. United States*, 316 U. S. 407; *Fed. Power Comm'n. v. Edison Co.*, 304 U. S. 375, 384; *United States v. Los Angeles R. R.*, 273 U. S. 299, 309. In *Columbia Broadcasting System v. United States*, *supra*, at page 424, the Court said:

> "We need not stop to discuss here the great variety of administrative rulings which, unlike this one, are not reviewable—either because they do not adjudicate rights or declare them legislatively, or because there are adequate administrative remedies which must be pursued before resorting to judicial remedies, or because there is no occasion to resort to equitable remedies."

It is a long settled rule of judicial administration that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Corp.*, 303 U. S. 41, 50.

When vacating its suspension order in the present case

the Commission did not "prescribe" any rates. Its order vacating the suspension was permissive only. If the tariffs had become effective without any suspension, the new rates would not be rates prescribed by the Commission but would be carrier-made rates, and the only recourse of aggrieved parties would be by filing a complaint with the Commission. In *Algoma Coal & Coke Co. v. United States*, 11 Fed. Sup. 487, the plaintiffs filed a complaint with the District Court to enjoin putting into effect increased rates which had been allowed by the Commission in *Emergency Freight Charges, 1935, Ex Parte No. 115*, 208 I. C. C. 4. With reference to the action of the Commission of which the plaintiffs complained, the Court said at page 494:

> "It prescribed no particular rates. It merely permitted the carriers to file new rates without suspension. It will, therefore, be open to the plaintiffs to present their contentions as to the particular rates affecting them in proper proceedings before the Commission under section 13 (49 USCA § 13). That is to say, the increased rates now complained of are carrier made rates and not Commission made rates."

Further on, at page 495, the Court said:

> "The plaintiffs have mistaken their remedy in the statutory scheme of railroad rate making. Their contention is that the Commission, without sufficient evidence or proper findings of fact, has determined or fixed particular rates for the plaintiffs' particular traffic. But this misconceives what the Commission has actually done. It was not dealing finally with particular rates for particular traffic, but permitting increased rates for selected commodities, by a general order affecting all the railroads in the country. If the increased rates as applied to the plaintiffs' particular situation can be shown to be unjust and unreasonable, their remedy is clearly by proceedings under sections 13 and 15 of the act (49 USCA §§ 13, 15) for individual relief, and for reparation orders under section 16(1) of the Act, 49 USCA § 16(1)."

Rates at first suspended but later permitted to take effect also are carrier-made rates and not rates prescribed by the Commission. Aggrieved parties have the same administrative remedy by complaint to the Commission which was available to them if the tariffs had not been suspended in the first instance. While an order lifting a previous suspension and discontinuing the proceeding is not an order prescribing rates, even an order prescribing rates is not *res judicata*. *Tagg Bros. v. United States*, 280 U. S. 420, 425. The prescribed administrative procedure was not followed through to a conclusion by appellees after the Commission, by its administrative action, vacated its earlier suspension order.

A District Court can take a case only when Congress has authorized that type of case to be taken. Under the statutory plan for judicial review, established by Congress in the provisions of the Urgent Deficiencies Act as construed by this Court, an order of the Commission must meet the requirements of reviewability to be within the jurisdiction of a District Court. An order of the Commission does not meet the requirements of reviewability if at the time it is entered administrative adjudication and the opportunity for administrative relief are still open, or if the prescribed administrative procedure has not been pursued to a conclusion.

The order of the Commission in the present case was entered before the administrative procedure had been completed, and before appellees had made any effort to obtain such administrative relief as in a proper proceeding they could show themselves reasonably to be entitled. It is not a reviewable order, and the lower court did not have jurisdiction to annul and set it aside.

Even If Courts Have Jurisdiction Over an Order Vacating a Suspension and Discontinuing the Proceeding, the Commission's Determination of the Issues Before It in the Present Case Is Final and Beyond the Authority of the Lower Court to Disturb.

The Commission's order (R. 15) suspending the new tariffs and defining the only question before it for consideration recited in part "It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the regulations and practices stated in the said schedules contained in said tariffs, * * *" The ordering portion of the order (R. 77) under review by which the Commission lifted its suspension and discontinued the proceeding is as follows:

> "It is ordered, That the order heretofore entered in this proceeding, suspending the operation of the schedules enumerated and described in said order, be, and it is hereby, vacated and set aside as of December 22, 1941, and that this proceeding be discontinued."

Among other things, the evidence showed that, under existing rates, shipments of grain could be moved, for example, from Morris, Illinois, to Chicago by barge and later moved by rail to New York from Chicago for a combined rate of 28.75 cents, while the rate to New York on shipments originating at Chicago, an intermediate point between Morris and New York on the barge-rail route, is 34½ cents. It also was shown by the evidence that shipments of grain could be moved from Morris to Chicago by barge and later moved by rail to New York for a combined rate of 28.75 cents, while the rate to New York on shipments originating at Ft. Wayne, Indiana, an intermediate point between Morris and New York on the barge-rail route, is 30 cents. Shippers from Morris moving shipments by barge to Chicago and by rail from Chicago

to New York were shown not only to have a lower through rate than the rail rate applicable from Chicago to New York, but also to have a lower through rate than is required to be paid by shippers located at intermediate points on the barge-rail route beyond and east of Chicago as far as Ft. Wayne and as far as the Ohio-Indiana state line. (R. 36, 516.)

Such an indefensible rate adjustment is the result of the practice of permitting rail proportional rates to be applied for the rail service performed on barge-rail shipments. It is the result of the practice of permitting an illogical and inconsistent combination of rates to become applicable to the movement of barge-rail grain. Through rates for barge-rail shipments, to be in line with the through rates on all-rail shipments, were not in mind when the measure or size of the proportional rates was determined or prescribed.

The Commission was in sympathy with the effort of the eastern carriers to put a stop to this practice. To that end it vacated its suspension order and discontinued the proceeding. The position of appellees was that they were entitled to the low proportional rates on barge grain. With the level of other competitive rates in mind, it obviously is beyond all reason to apply the low proportional rates in combination with the barge rate to make a through charge on barge rail shipments, and no evidence exists which would justify the Commission or a court in approving such a practice.

If appellees are of opinion that they are entitled to have applied out of Chicago on barge-rail shipments proportional rates lower than the Chicago local rates but which would be higher than the present Chicago proportionals, or that they are entitled to have applied on barge-rail shipments joint barge-rail rates lower than the combination of the local rates and the barge rate but which would be

higher than the combination of the existing barge and proportional rates, they have their remedy by formal complaint. In this connection the Commission said at page 311 of its report on reconsideration, 248 I. C. C. 307 (R. 47, 55), that protestants' allegations could not be sustained in the investigation and suspension proceeding, "although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations."

The Commission was confronted with an indefensible rate adjustment with the eastern carriers sought to correct by proposing changes in certain of their rates. For reasons heretofore mentioned, the Commission could not approve the practice of applying rail proportional rates on barge shipments when such a practice in connection with the rates before it resulted in the gross inequalities and preferences disclosed by the evidence and when such a practice not only had broken down a portion of the grain-rate structure to Chicago but threatened an imminent breakdown of the grain-rate structure east of Chicago. There were parties, other than carriers, in favor of the proposed change as well as parties in opposition thereto. Those opposed and claiming they would suffer injury when the tariffs became effective were invited to lay their grievances before the Commission "in a proper proceeding." It is for the Commission to appraise the advantages and disadvantages of a proposed change in rates and to determine, from the standpoint of all competitive interests and from the standpoint of the carriers, whether the requirements of the Act will better be fulfilled by permitting the proposed changes to take effect or by suspending them permanently.

In *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, this Court had before it various orders entered by the Commission in its investigation of the western grain-rate structure. The Commission had

concluded that the rates through primary markets should be made on the combination of flat rates to and proportional rates from the markets. This conclusion affected some interests adversely and was to the advantage of other interests, but it was reached after weighing the prospective gains and hurts. In refusing to disturb the Commission's orders, this Court said at page 548:

> "We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker with so sensitive an organism as the grain rate structure only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive rate-break adjustment was designed to remove—evils which, for all we know, would be far more serious than those complained of by the appellants."

The Commission's order discontinued the proceeding. By this order the Commission closed its investigation. The effect of the lower court's final decree is that the investigation which the Commission had closed is now open and pending, and the court has directed that the Commission reach an administrative conclusion therein different from the administrative conclusion reflected by the order which the court set aside. If the Commission is of the opinion that the nature of the proceeding, and the issues raised by the order instituting the investigation, are such that no other conclusion than the one reached is justified in that proceeding, any further action it takes will not be the result of exercising its own judgment. Further, by its final decree, the lower court directs that the proposed tariffs shall not be put into effect although Section 15(7) provides that if the proceeding before the Commission is not concluded within the suspension period the proposed tariffs "shall go into effect at the end of such period."

The Commission, with its experience and knowledge in

rate and transportation matters, is in a better position than a court to decide upon the kind of proceeding in which the rights of all parties best can be protected and in which full compliance with the provisions of the Act may be accomplished. Question of this character are for the Commission to pass upon in the exercise of its administrative powers and a court is not authorized to substitute its judgment for that of the Commission.

This Court should reverse the final decree of the lower court and remand the cause with directions to dismiss the complaints.

BRYCE L. HAMILTON,
A. B. ENOCH,
Attorneys for Western Carriers

December 16, 1942.

APPENDIX.

Excerpt from the Report of the Commission by Division 2 (R. 18—246 I. C. C. 353, 374):

"Although the fourth section of the act does not apply to unregulated water carriers, the evidence here shows that the application of the barge rates to Chicago plus the rail proportionals beyond bring about evasions of the principles rather than violations of that section. For example, such combinations result in lower through charges to the Atlantic seaboard than the local rail rates to the same destinations from intermediate origin points on: (1) Domestic grain from all points in central territory (Chicago and east) west of a line drawn from Bay City, Mich., through Jackson and Sturgis, Mich., and Kendallville, Fort Wayne, Marion, Westville, Indianapolis, Greensburg, Ind., to Aurora, Ind.; (2) export grain from all points in central territory (Chicago and east) west of a line drawn from Atkins, Mich., through Oxford, Ann Arbor, Hanover, and Pittsford Junction, Mich., and thence along the Ohio-Indiana State line to the Ohio River; and (3) export traffic of barley, corn, oats, rye, and wheat from all points in central territory (Chicago and east) west of a line drawn from Painesville through Lordstown to East Liverpool, Ohio."

Excerpt from the Report of the Commission on Reconsideration (R. 47—248 I. C. C. 307, 310, 311):

"To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combinations will be 1.75, 4.75, and 0.75 cents, respectively, lower than the all-rail rates.

To trunk-line territory, the in-bound barge movement represents a very small proportion of the total

haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but 6 percent. To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the in-bound barge rate of 2.75 cents plus the out-bound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5-cent local rates from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the in-bound interstate rail rate of 9.5 cents plus the out-bound rate of 26 cents), or 1 cent higher than the local rate from Chicago." (Page 310.)

"As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are, of course, determined by the measure of the in-bound and through rates, and properly may vary according to the relative length and nature of the in-bound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations." (Page 311.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

No. 175

INTERSTATE COMMERCE COMMISSION, et al.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF ON BEHALF OF APPELLANTS,

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY AND THE CHESAPEAKE AND OHIO RAILWAY COMPANY

LEO P. DAY,
Solicitor for The New York Central Railroad Company.

WILLIS T. PIERSON,
Solicitor for Erie Railroad Company.

EDWARD A. KAIER,
Solicitor for The Pennsylvania Railroad Company.

HORACE L. WALKER,
LAWRENCE CHAFFEE,
Solicitors for The Chesapeake and Ohio Railway Company, and The New York, Chicago and St. Louis Railroad Company.

FRANK H. COLE, JR.,
Solicitor for The Baltimore and Ohio Railroad Company.

December 17, 1942.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

No. 175

INTERSTATE COMMERCE COMMISSION, et al.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF ON BEHALF OF APPELLANTS,

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY AND THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Opinions Below.

The opinion of the specially constituted District Court (R. 1663), *Cargill, Inc., et al.* v. *U. S., et al.*, and *Inland Waterways Corporation* v. *U. S., et al.*, is reported in 44 Fed. Supp. 368.

The reports of the Interstate Commerce Commission entitled Investigation and Suspension Docket No. 4718, *Grain Proportionals, Ex-barge to Official Territory*, appear in 246 ICC 353 (R. 19), and 248 ICC 307 (R. 47).

Jurisdiction.

The final decree of the District Court was entered on April 16, 1942 (R. 1677). Petition for appeal was filed (R. 1679) and allowed on May 21, 1942 (R. 1691). Probable jurisdiction was noted by this court on October 12, 1942. The jurisdiction of this court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (Title 28, U.S.C.A., Secs. 47 and 47a) and Section 238 of the Judicial Code as amended (Title 28, U.S.C.A., Sec. 345).

STATEMENT OF THE CASE.

This action was brought in the court below by a barge line operating on the Illinois Waterways, and on other waters and by certain grain dealers engaged in the marketing of grain and grain products at Chicago, Illinois, and elsewhere, against the United States, the Interstate Commerce Commission and six railroads, to enjoin, annul and set aside an order entered by the Interstate Commerce Commission on December 1, 1941, in the proceeding known as Investigation and Suspension Docket No. 4718, *Grain Proportionals, Ex-Barge to Official Territory*, and to enjoin and prohibit the railroads from publishing, filing with the Commission and making effective tariffs or schedules of rates and charges pursuant to that order. By the order, schedules published by certain railroads, including the railroads appellants, to become effective October 15, 1939, restricting the application of proportional rates * on grain and grain prod-

* A proportional rate is one for but part of through transportation. The tariffs always provide rules which show upon just what traffic each proportional rate applies.

ucts (hereinafter termed grain) from Chicago, Illinois, to destinations east thereof so as to prohibit their use on movements from Chicago of grain which had been transported to Chicago by barge via the Illinois Waterways * (hereinafter sometimes termed ex-barge grain), were found not unlawful.

After hearing in due course, a specially constituted District Court on April 16, 1942, entered findings of fact, conclusions of law and a decree granting the injunctive relief sought by complainants, appellees here. By this appeal, appellants seek an order from this court reversing the decree of the court below and remanding the case with instructions that the bills of complaint be dismissed.

Appellants challenge the decree entered by the court below as an attempted exercise of authority with which the court was not clothed by the statute. Appellants contend that the order of the Commission against which this action was brought constituted a valid exercise of the authority with which the Commission was vested, was supported by an adequate record, and reflected proper application of the governing statute, and that the court below was without authority to enter its decree setting the order aside merely because the court reached conclusions which differed from those reached by the Commission upon consideration of the same record.

The questions at issue on this appeal are narrow, and the principal questions may be stated thus:

(1) Was the order of the Interstate Commerce Commission based upon essential findings of fact supported by substantial evidence?

* Similar restrictions of the application of proportional rates provided from certain points other than Chicago were published concurrently, but, for our purposes here, these other restrictions are of but slight significance.

(2) Was the order of the Interstate Commerce Commission based upon the proper application of the rules of law contained in the governing statute, the Interstate Commerce Act, as amended (Title 49, U.S.C.A., Sec. 1 *et seq.*)

(3) Was the action of the court below tantamount to a substitution of its judgment concerning the weight of the evidence for the judgment of the Interstate Commerce Commission?

Other questions at issue are:

(1) Did the appellee, Inland Waterways Corporation, and intervener, A. L. Mechling, doing business as A. L. Mechling Barge Line, have the right to maintain an action to enjoin the aforesaid order of the Interstate Commerce Commission?

(2) Did the court below have jurisdiction to enter a decree against the defendant railroads?

When the railroads published and filed with the Commission the schedules restricting the application of their proportional rates on grain and grain products from Chicago and certain other points to destinations east thereof, appellees, except intervener, A. L. Mechling, and others, filed protests with the Commission against these schedules. Exercising the authority with which it was vested by Section 15(7) of the Interstate Commerce Act, as amended, the Commission entered an order suspending operation of the schedules for a period of seven months from the published effective date thereof and instituted an investigation into and concerning the lawfulness thereof.* Practically speaking, the investigation was limited to consideration of the lawfulness of the suspended schedules, under Sections 1, 2 and 3 of that

* After expiration of the period of enforced suspension, the carriers voluntarily postponed the effective date pending ultimate determination of the proceeding.

Act, as no question was raised concerning the lawfulness of the schedules under other provisions of the statute.

For a clear understanding of the schedules which were the subject of the assailed order entered by the Commission, and before describing them in detail, it seems desirable to explain briefly the integrated structure of the rates on grain and grain products into which these schedules were intended to be woven, the form of the tariffs publishing the rate structure, and the circumstances which caused the publication of the schedules in controversy.

The Rate Structure.

Succinctly stated, the through charges for the transportation of grain and grain products by rail between points in various sections or territories of the United States have been, and are, determined by the application of a system of proportional rates to and from points, including Chicago, known as gateways. Most of these gateways are important grain markets. Many of these rates have been prescribed by the Interstate Commerce Commission. Constituting merely parts of the through charges, the proportional rates bear no definite relation to the local rates to and from the same gateways, although in all instances they are lower than the local rates. The system of proportional rates is of many years standing.

The primary purpose of the proportional rate adjustment here considered is to provide an equalization of through charges from any given point of origin in one territory to any given point of destination in another territory via numerous routes through several gateways. To a limited extent, the proportional rates are designed also to provide a relative equality of through charges for hauls of substantially the same length from

s competitive origin territories through common
ays to common points of destination.

territories with which we are concerned in this
ay be described generally * as follows:

THWEST TERRITORY is comprised generally of the
of North and South Dakota, Minnesota, Wiscon-
lichigan (upper peninsula), Montana, Wyoming,
, Oregon and Washington, and certain provinces
Dominion of Canada.

NS-MISSISSIPPI RIVER TERRITORY is comprised prin-
y of the states of Arizona, Arkansas, Colorado,
is, Missouri, New Mexico, Nebraska, Oklahoma,
, and certain stations in Iowa and South Dakota.

FICIAL TERRITORY is generally all that territory east
e Mississippi River and north of the Ohio-Potomac
s, except the northern peninsula of Michigan and
it a small section of southern Wisconsin. Official
tory is itself divided into three sub-territories:
-al Freight Association or Central Territory is that
on west of a line drawn through Buffalo and Pitts-
h. Trunk Line Territory includes the area between
ral Territory and the New England States, and
England Territory is comprised of the New England
es.

rtain points, such as Chicago and Peoria, Illinois,
gateways to Official Territory, common to the move-
t of grain from both Northwest and Trans-Missis-
i River Territories.

o preserve the integrity of the rate levels and the
way equalization, it has been necessary to provide
portional rates from the gateways which vary in

* The precise boundaries of the Northwest Territory and Trans-
ssippi River Territory are shown in the various notes carried on
s 4 and 5 of Exhibit 1 (R. E. 1, introduced R. 220). To conserve
and details, we have here given but a general picture of these
ories

amounts according to the origin of the traffic. Thus, from Chicago to Toledo, Ohio, the proportional rate is 15½ cents per 100 pounds * on grain originating in the Northwest and 12½ cents on grain originating in Trans-Mississippi River Territory. From Peoria, Illinois, to Toledo, the proportional rates are 15½ cents on grain originating in the Northwest and 14½ cents on grain originating in Trans-Mississippi River Territory. The proportional rates from Minneapolis (in Northwest Territory) to Chicago and Peoria are 13 cents, hence the proportional rates from Chicago and Peoria on ex-Northwest grain are the same, 15½ cents, to equalize the through charges from Minneapolis to Toledo via these two intermediate gateway markets. The proportional rates from Kansas City (in Trans-Mississippi River Territory) are 14 cents to Peoria and 16 cents to Chicago. To equalize the through charges from Kansas City to Toledo via these two intermediate gateways and at the same time to equalize the through charges from Kansas City with the through charges from Minneapolis, the proportional rates on the Kansas City traffic from Peoria to Toledo are 14½ cents and from Chicago to Toledo are 12½ cents.**

The adjustment of proportional rates from the gateways of Chicago and Peoria to Toledo are typical of the general adjustment from these gateways to all destinations in Central Territory.

The rates from Kansas City, Minneapolis, and all other western origins to Chicago, Peoria and other gateways to Official Territory were prescribed by the Commission in its Docket 17000, Part 7, *Grain and Grain Products Within the Western District and for Export*,

* Rates stated hereinafter are per 100 pounds. All rates stated are for shipments in carloads.

** These and other examples are given on Exhibit No. 7, R. E. 38, introduced R. 220.

215 ICC 83, 223 ICC 235, and 231 ICC 793. The proportional rates from these gateways to Central Territory were prescribed by the Commission in *Southwestern Millers League* v. *A. T. & S. F. Ry. Co.*, 225 ICC 195, and 227 ICC 795.

To destinations in Trunk Line and New England Territories, hereinafter sometimes termed "the East," grain from the Northwest and grain from Trans-Mississippi River Territory takes the same proportional rates from Chicago. To New York, for example, this rate is 26 cents. From Peoria, however, the proportional rates to New York are 26 cents on grain from the Northwest, and 28 cents on grain from Trans-Mississippi River Territory. The inbound rates on grain from Minneapolis are the same, 13 cents, to Chicago and Peoria, while the inbound rates on grain from Kansas City are 2 cents higher to Chicago than to Peoria, hence to equalize the through charges to the East via the two gateways the ex-Northwest proportional rates are the same from Chicago and Peoria, while the ex-Trans-Mississippi River proportional rates are 2 cents lower from Chicago than from Peoria.*

Thus it is apparent that the maintenance from each gateway to each destination of several proportional rates, each proportional rate particularly limited to application on grain from a particular origin area, is necessary to effect gateway equalization.

In addition to these varying proportional rates east of the gateways applicable to traffic from the West, there is a local level of rates applicable on grain moving entirely between points within Official Territory. The local rates under this Official Territory level from the gateways were and are higher than any of the several pro-

* These and other examples are given on Exhibit No. 7, R. E. 38, introduced R. 220.

portional rates from the gateways. Grain originating in Illinois may move through Chicago to Central Territory and to the East. There are provided for the movements of such grain from Chicago to Central Territory, proportional rates termed "reshipping rates," which do not correspond either to the ex-Northwest or to the ex-Trans-Mississippi Territory River proportional rates from Chicago to Central Territory.* To the East, through rates are published from the Illinois origins via Chicago, and there is no proportional rate application on such traffic from Chicago.** The inbound interstate rates to Chicago,*** coupled with the proportional reshipping rates outbound to Central Territory, and the through rates via Chicago, to the East produce charges for the through movements reflecting the Official Territory local level of rates.

The Tariff Arrangement.

In order that there be provided east of the gateways the several levels of proportional rates, and the local rates, there are set up in the tariffs various columns of rates, each proportional rate column being controlled in its application by a note. An illustration of the tariff arrangement is furnished by the first three pages of Exhibit 68 (R. E. 104, introduced R. 1394), showing the various rate columns with the note numbers governing each column, and by Exhibit 1 (R. E. 1, introduced R.

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* Representative examples of these reshipping rates are shown on Exhibit No. 68, R. E. 104, introduced R. 1394.

** Representative examples of these through rates are shown on Exhibit No. 9, R. E. 43, introduced R. 220, and on Exhibit 13, R. E. 60, introduced R. 237. The restriction against application of proportional rates from Chicago on traffic originating at points from which through rates are published, is provided in Note 20, Agent Jones' Tariff Series ICC 1373, which note is included as page 19 of Exhibit No. 1, R. E. 1, introduced R. 220, and which is reproduced hereinafter as Appendix 1-a.

*** Examples of which are shown on Exhibit No. 4, R. E. 30, introduced R. 220.

220), pages 4, 6 and 19, showing the provisions of the several governing notes.*

The Circumstances Which Caused the Publication of the Schedules in Controversy.

We here summarize further evidence supporting the findings of the Commission, which evidence develops the circumstances causing publication of the schedules in controversy.

Prior to 1933, there was no movement of grain by barge via the Illinois Waterways to Chicago. There was, however, a movement of grain via lake steamer to Chicago, which grain originated principally in the Northwest (R. 1312). In 1933, the channel of the Illinois River was opened to traffic (R. 298). Thereafter Illinois grain, chiefly corn, for the first time (R. 432-433) began to move by barge to Chicago from various origins located along the Illinois Waterways. The proportional rates were accorded to this ex-barge traffic under tariff provisions published prior to the inauguration of barge service on the Illinois Waterways and not intended (R. 218 and 273-274) to provide for application on such traffic, although unfortunately they were not specifically restricted against it (R. 257).

The note governing the ex-Northwest proportional rates from Chicago to destinations in Central Territory was published to apply on "shipments which arrive by boat line at Chicago," without restriction as to the origin of grain so arriving. The other proportional rates ap-

* Pages 4 and 6 of Exhibit 1 carry the notes governing the application of each of the proportional rate levels to Central Territory destinations, named in the columns headed "Trans-Mississippi River," "Northwest," and "Reshipping." Page 19 of Exhibit 1 carries the note governing the application of the proportional rate level to the East, named in the column headed "Proportional." The Note 20 governing application of the "Trans-Mississippi River" rates is found on page 4 of Exhibit 1, and is not the same as the Note 20 governing application of the "Proportional" rates, which latter note is found on page 19 of Exhibit 1.

plicable east of Chicago to destinations in Central Territory were restricted to apply only on grain originating *in a particular area irrespective of the method of transportation to Chicago.** Hence to destinations in Central Territory, the ex-Northwest proportional rates and only those proportional rates were applicable to, and in fact were applied to, grain originating in Illinois moving to Chicago via the Illinois Waterways and therefore arriving at Chicago "by boat line," although these proportional rates did not apply on grain from the same origins which moved to Chicago by any other form of transportation.

The note governing the application of the proportional rates east of Chicago to destinations in the East, effective since January 15, 1924 (as shown by page 19, Exhibit 1, *supra*), made applicable the proportional rates on traffic reaching the reshipping point via "a rail or water transportation line." Because this note also was inappropriately restricted, the proportional rates to the East were likewise applied on Illinois grain arriving at Chicago via the Illinois Waterways, although these rates did not apply on such grain arriving at Chicago via any other form of transportation.**

The history of the notes governing the application of the proportional rates was shown in Exhibit 1 (R. E. 1, introduced R. 220) and in Exhibits 96, 98 and 99 (submitted after close of hearing in response to a request,

* The reshipping proportional rates on grain from the Illinois origins are restrcted so as not to apply on grain moving via water transportation line. (Note 45, page 6, Ex. 1, R. E. 1, introduced R. 220).

** The proportional rates are limited by the note so as to become applicable only on traffic originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original point to final destination. There are joint through commodity rates from Illinois origins to destinations in the East, via Chicago. Exhibit 13 (R. E. 60, introduced R. 237) shows what are termed "Specifics," which are the unpublished (R. 248) proportions to Chicago of one-factor through commodity rates from Illinois origins to eastern destinations. Division 2 of the Commission discussed these through rates and specifics in 246 I. C. C. 353, 356.)

R. 1660, the Examiner ruling at R. 1661 that the material could be submitted within fifteen days after close of hearing).

Rates to and from the equalized gateways were shown in Exhibits No. 7 (R. E. 38, introduced R. 220, explained R. 218) and No. 8 (R. E. 41, introduced R. 220, explained R. 219). These exhibits illustrate (R. 218, 219) the varying rates from the respective origin areas to common gateways and the proportional rates from the gateways varying in measure necessary to effect equalization of through charges via the common gateways. Reference was made to *Southwestern Millers League* v. *A. T. & S. F.*, 225 ICC 195, 227 ICC 795, in which case the Commission prescribed the proportionals from the gateways to destinations in Central Territory for the purpose of equalizing the through charges on grain from the Northwest with the through charges on grain from Trans-Mississippi origins for comparable through movements, at the same time preserving the gateway equalization from each origin area (R. 218).

It was shown that this ex-barge grain originated in Illinois.* The volume of receipts and shipments of grain at and from Chicago were shown by years (first 9 pages of Exhibit 19, R. E. 80, introduced R. 435, explained R. 432-433; and Exhibit 38, R. E. 89, introduced R. 709, explained R. 705). The volume of this Illinois grain (prin-

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Mr. A. L. Mechling stated that he made his first trip up the waterways to Chicago in the fall of 1935 (R. 909) and that during the last several years he has handled grain from Havana, Pekin, Peoria, Lacon, Hennepin, LaSalle, Ottawa, Seneca, and Morris, Illinois (R. 925). Morris, Illinois, was shown to be the largest shipping point of this barge grain moving to Chicago (R. 941). Seneca, Ottawa and LaSalle were large shipping points ranking second to Morris (R. 941). The Allied Barge Company handled almost entirely grain of the Cooperative Allied Grain Dealers Corporation (R. 726) from Morris and Seneca, Illinois (R. 741), at which points that company has facilities (R. 713). Information showing the amount of Illinois grain moving to Chicago via the waterways for the year 1939 is given at Record 1654. This information shows that the A. L. Mechling Barge Line handled the largest volume and that the Allied Barge Line ranked second. It shows also the number of trips and the total weight in pounds handled by each barge line.

cipally corn), arriving via the Illinois Waterways increased substantially after 1935, as shown by Exhibit 19 above and by R. 1654.

It was shown that there were no arrangements with any of the barge lines for the operation of through routes from the origins of the grain through Chicago to final destinations east thereof (R. 1052; see also as to Mechling, R. 985; as to Inland Waterways, R. 1225 and their complaint Sec. 10, R. 5). The Inland Waterways Corporation was shown to handle little of this Illinois grain by barge to Chicago (R. 750 and 1240-41 and Exhibit 63, R. E. 101, introduced R. 1252).

While, prior to the opening of the Illinois Waterways, grain had arrived at Chicago "by boat line" or "via water-transportation line," that grain had originated principally in the Northwest (R. 1312), with exceptions due to drought conditions in Illinois and the West (R. 433-434).

Substantial quantities of grain from the origin area along the Illinois Waterways was trucked to Chicago, but the proportional rates did not apply on such grain. Those who handled truck grain complained and contended that if the proportionals continued to apply on ex-barge grain they should be applied also to the ex-truck grain (R. 493).

As previously explained, grain originating in Illinois and moving via rail via Chicago either to Central Territory or the East pays rates reflecting the Official Territory local level. Exhibit 11 (R. E. 55, introduced R. 220, explained R. 219-220) shows the local level and that it is below the level approved as a maximum reasonable basis for grain rates within Official Territory in quite a number of cases cited in the decision of Division 2 in the present case (246 ICC 353, at 366).

Comparisons were made of the total charges from

this Illinois origin area, barge to Chicago, plus proportional rates via rail to the East, with all-rail rates from a large territory running as far east as eastern Indiana and Michigan (Exhibits 5, R. E. 35, introduced R. 220, explained R. 216; and 6, R. E. 37, introduced R. 220, explained R. 217; and Exhibit 9, R. E. 43, introduced R. 220, explained R. 219; and Exhibit 61, R. E. 99, introduced R. 1052, explained R. 1054). It is shown in the exhibits referred to, that grain originating on a railroad at points quite some distance east of Chicago and moving east therefrom via rail, paid a transportation charge greater than the through transportation charge paid by grain originating in Illinois moving to Chicago by barge and thence for a longer haul by rail to the same destination in Official Territory.

Exhibit 5 shows that to common destinations in Official Territory the total through transportation charges on grain from the origin area along the waterway in Illinois moving via barge to Chicago, thence East by rail were lower than the charges on all rail traffic originating at any point on the B. & O. R. R. Co. west of Avilla, Indiana; also lower than on traffic originating at any point on the Erie Railroad west of Uniondale, Indiana; and at any point on the Grand Trunk west of South Bend, Indiana; at any point on the Michigan Central west of Galien, Michigan; at any point on the N. Y. C. west of Kendallville, Indiana and Jonesville, Michigan; at any point on the N. Y. C. & St. L. west of Rutland, Indiana; at any point on the Pennsylvania west of Plymouth, Indiana; and at any point on the Wabash west of North Liberty, Indiana.

Exhibit 6 is a map which graphically illustrates this rate situation. Grain originating any place west of the green line shown on Exhibit 6, which takes in eastern Indiana and Michigan, pays, as shown in Exhibit 5,

charges for its transportation all-rail greater than the total barge and rail charges paid by grain originating in Illinois, moving to Chicago by barge, thence rail to the same destination. The ex-barge grain receives a greater rail haul than any grain originating on these railroads in this area shown on Exhibit 6, east of Chicago. There is a substantial production of grain in that part of Indiana west of the green line shown on Map Exhibit 6 (R. 520-521). This grain moves to the East and Southeast (R. 521).

The lower total charges on grain moving barge to Chicago, thence rail, result from the use of the proportional rates east of Chicago, as such grain arrives "by boat lines" or "via water transportation lines."

The eastern rail carriers were shown to have substantial mileage in Illinois (R. 265). In order to meet the competition of the waterways resulting from the lower total charges on grain moving by barge to Chicago and thence east by rail, the eastern rail lines made some reductions in their all-rail rates from certain Illinois origins adjacent to the waterways (R. 257). Nevertheless, the waterway competition became more acute, even east of the Illinois-Indiana state line (R. 265). Ultimately, it became apparent that some other action was necessary to prevent further reductions and continued and ever-spreading disturbance of the rate level in and east of that area, a rate level already very low (R. 265-266). Restricted application of the proportional rates from Chicago was proposed to prevent further disruption of the all-rail rate structure from Illinois, Indiana and Michigan to Official Territory (R. 265-266 and see Exhibit 5, R. E. 35, introduced R. 220, explained R. 216).

It was shown that due to the competition, grain was being trucked cross-country for some forty miles to get

to the waterway at Morris, Illinois, when the origin itself was only sixty miles by barge from Chicago (R. 258-259). Morris is itself 57.7 miles by barge from Chicago (see Exhibit 67, R. E. 102, introduced R. 1394).

An illustration of what could be saved by having the grain arrive at Chicago in a boat, thus obtaining the use of the proportional rates, is furnished by Exhibits 69 (R. E. 107, introduced R. 1394) and 67 (R. E. 102, introduced R. 1394). Exhibit 69 shows that the barge-rail total cost from Morris, Illinois, to Circleville, Ohio, was 7.25 cents less than the all-rail rate. Exhibit 67 shows that the saving secured by moving the grain via water transportation from Morris to Chicago was 1.25 cents under the intrastate rate level, and 5.75 cents under the interstate rate level. However, for the through transportation, the shipment ended up with a saving greater than the saving attributable merely to the use of the water route to Chicago. This was brought about by the use of the proportional rate levels east of Chicago.

The carriers pointed out that if this proportional rate level east of Chicago was continued on traffic originating within Illinois in Official Territory, within the vicinity of the river, it would favor these Illinois shippers by barge to the prejudice of other shippers within Official Territory (R. 289, 336).

Peoria, Illinois, is a river port (R. 463) and a gateway, equalized with Chicago on ex-Northwest and ex-Trans-Mississippi River grain (see Exhibit 7, R. E. 38, introduced R. 220). However, the proportional rates from Peoria to Central Territory did not apply on Illinois grain reaching Peoria by water; *i.e.*, on ex-barge grain (Notes 40 and 45, page 6 of Exhibit 1, R. E. 1, introduced R. 220), and the proportional rates from Peoria to the East had no practical application to ex-barge grain, because they were subject to a requirement

that the combination of the rates to and from the reshipping point (Peoria), be not less than the local rate from the reshipping point (Note 40, page 17 of Exhibit 1, *supra*). The proportional rates from Chicago to the East were subject to a somewhat similar requirement which, however, was limited to traffic moving into Chicago by rail. The Peoria interests complained of the more liberal application of the proportional rates from Chicago, and they supported the restrictions proposed by the eastern lines because these restrictions provided a relative equality of treatment of the two gateways with respect to ex-barge traffic (R. 468-469), where the distinction is explained, and R. 464 where it is contended that this difference in treatment should be cleared up).

The practical effect of the application of the proportional rates on ex-barge grain from Illinois was to accord the shippers of grain by barge an undue advantage and to seriously disturb the sensitive grain rate structure. To preclude the further application of these proportional rates on ex-barge grain and thereby to rectify the situation which threatened to disrupt the grain rate structure over a wide territory, the rail carriers engaged in the transportation of grain eastbound from Chicago published the schedules which resulted in this litigation.

The Suspended Schedules.

The provisions stated in the schedules, the operation of which was suspended by the Commission's initial order in the proceeding, varied in form; but all, in effect, provided that the proportional rates from Chicago and the other gateways to Official Territory, to Central Territory and to the East, would not apply on traffic moving to such gateways via the Illinois Waterways. The provisions with which we are here concerned primarily, are

contained in Appendix 1-b hereto, quoting the note governing the application of proportional rates to the East, and in Appendix 1-d hereto, quoting the note governing the application of the ex-Northwest proportional rates to Central Territory. The pertinent provision of each of these notes—the provisions about which this entire controversy really centers—reads substantially as follows:

> "Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz: Rivers, Canals, and connecting waterways."

The revision of some of the other notes was effected simply by eliminating all reference to the application of the rates which they governed on any ex-water traffic.

Each of the several suspended provisions and each of the provisions which the former were intended to supersede are reproduced in full in Exhibit 1, pages 7 to 9 and 22 to 28 (R. E. 1, introduced R. 220).

While there were several tariff provisions governing the application of proportional rates from several gateways to destinations throughout Official Territory, only the notes governing the application of the ex-Northwest proportional rates from Chicago to Central Territory and of the proportional rates from Chicago to the East are of significance, because the other proportional rates from Chicago and the proportional rates from the other gateways were so restricted in one form or another, as to have no practical application on Illinois grain arriving at Chicago or at such other gateways via the Illinois Waterways. All of the Illinois grain which has moved via the Illinois Waterways has moved to the Chicago gateway. It is our purpose to limit the discussion of the provisions which are the subject of this litigation, to the two provisions aforementioned, repro-

duced in Appendices 1-b and 1-d hereto, which, if made operative, would cause the only material change in the application of the proportional rates east of any of these gateways. The notes presently effective, due to the suspension, are carried in Appendices 1-a and 1-c hereto.

Decision by Commission.

Following the hearing, an Examiner's proposed report, exceptions thereto, and oral argument, Division 2 of the Commission rendered its decision dated July 31, 1941 reported in 246 ICC 353 (R. 19). In this decision, it was found that the proposed schedules were not shown to be unlawful. Petitions for reconsideration of this decision were filed, and thereafter the entire Commission, under date of December 1, 1941, rendered its decision, reported in 248 ICC 307 (R. 47), the Commission concluding:

> "The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful."

This final determination of the Commission was supported by findings throughout the several reports, the substance of which findings we carry as Appendix 4 hereto.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

The assignments of errors relied upon are printed in Appendix 3 to this brief. Assignment No. 3 challenges the jurisdiction of the District Court over the carrier defendants. Assignment No. 4 challenges the right of the Inland Water Corporation and A. L. Mechling, intervener, to bring and maintain their suit to set aside the order of the Interstate Commerce Commission. Assignments Nos. 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23 and 24 are addressed to appellants' contention

t the court below did not appreciate the nature and ent of court review of orders of the Interstate Com-rce Commission, and did not remain within the proper ge of issues presented in such a case. Assignments s. 1, 6, 10, 11, 19, 20, 21, 23 and 24 are addressed appellants' contention that the order of the Commis-n was based upon essential findings of fact supported substantial evidence and reflected proper application the governing provisions of the Interstate Commerce t.

SUMMARY OF ARGUMENT.

1. Court review of an order of the Interstate Commerce Commission is confined within a narrow scope. Administrative orders are not to be disturbed except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, reflect errors of law, or for some other reason amount to an abuse of power. *Board of Trade of Kansas City* v. *U. S.*, 314 U. S. 534, 546. Other like cases are cited in the argument. The Court may not consider weight of evidence or soundness of reasoning. (*Virginian Ry. Co.* v. *U. S.*, 272 U. S. 658, 663), nor substitute its judgment as to existence of preference for that of the Commission (*U. S.* v. *L. & N. R. R. Co.*, 235 U. S. 314, 320).

2. The Commission made essential findings (carried in Appendix 4 herein) which are amply supported by the evidence summarized in the Statement of the Case, *supra*. Court and Commission differ not in regard to facts, but on conclusions drawn from the facts. The principal differences * between Court and Commission have to do with the proper construction of proportional rates and just what portion of the rate structure was being protected by the Commission; *i.e.*, whether the local rates from Illinois to Chicago or the general rate structure.

In only one respect did the court suggest that there was no evidence to support a finding. The Court found (finding No. 18) there was no evidence to support the finding of the Commission, that the proposed schedules

* In addition, there are two minor differences between Court and Commission which are fully answered in the body of argument where all differences between Court and Commission are shown.

will not prohibit the movement by barge-rail, even to Trunk Line Territory. There was evidence on this point (R. 267, 268, 269). Value and weight of evidence, and inferences to be drawn therefrom, are for the Commission. *U. S. v. Pan American Corp.*, 304 U. S. 156, 158.

3. The Court, because physical carriage beyond the reshipping point was substantially the same for ex-barge, ex-lake and ex-rail grain, concluded that ex-barge grain should not lawfully be required to pay a greater charge than did ex-rail and ex-lake grain for that service. Finding that the transportation in and out of Chicago was not a continuous through movement, and that the commercial attributes of the inbound shipment were separate from those of the outbound movement, the Court concluded that the rates east of the gateway should not vary (for that movement which was substantially the same) dependent upon origin of the traffic, method of transportation to the gateway or any other transportation factors pertaining to the inbound movements. The Commission (248 ICC 307, 311) stated:

> "To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to origin of the commodity would have to be condemned. * * * reshipping or proportional rates are in their essence balances of through rates. Such balances are, of course, determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service."

All the circumstances and conditions attendant upon the handling of the traffic, including prior or subsequent movements, must be considered in determining lawfulness under Section 2 of the Interstate Commerce Act ((Appendix 2, e) prohibiting common carriers from charging any person greater or less compensation for any service rendered in the transportation of passenger

or property, subject to part one, than it charges any other person for doing a like and contemporaneous service in the transporation of a like kind of traffic under substantially similar circumstances and conditions.) *T. & P. Ry. Co.* v. *I. C. C.*, 162 U. S. 197; *I. C. C.* v. *B. & O. R. R. Co.*, 145 U. S. 263, 281; see also *Union Pac. Ry. Co.* v. *U. S.*, 117 U. S. 355, 363.

4. A proportional rate is necessarily part of a through rate and capable of use only as such. *Great Northern Ry. Co.* v. *Sullivan*, 294 U. S. 458, 460. The Commission has recognized and followed this principle in numerous decisions cited in the body of the argument. The Commission has had occasion to establish or approve rates for movements which were but parts of through movements, the portion only being within its jurisdiction and in these cases the Commission has shown not only the necessity for consideration of the entire movement of the traffic in order to fix the proper proportional, but it has shown further that a proportional fixed after such a view of the transportation factors involved is lawful and proper. See *Lumber from San Francisco Bay Points*, 78 ICC 760, 766, 767; many other similar cases are cited in the body of the argument.

Traffic from various areas may converge and may move for portions of the total hauls over a common segment. In properly rating the traffic, even for its movement over that common segment, consideration must be given to the respective total movements. Any differences between the total movements must be properly reflected even on the common segment or all rates would be local rates as stated by the Commission in our present case, *supra*. See also *Central Pennsylvania Producers' Coal Asso.* v. *B. & O.*, 196 ICC 203, 235.

5. It is contended by the barge lines that the Interstate Commerce Act, as amended September 18, 1940,

affords them some right to maintain this action, and that the order was predicated on evidence taken before the amendments were effective and based on an improper application of the Act as thus amended, particularly Section 3(4) and the National Transportation Policy. The Panama Canal Act, enacted August 24, 1912, conferred jurisdiction on the Commission in connection with through rail-and-water routes. The empowering provisions were included as Section 6(13) of the Interstate Commerce Act (see Appendix 2, h) long prior to the amendments of 1940. This jurisdiction was supplemented by the Inland Waterways Corporation Act of June 3, 1924 (see Section 3(e), Appendix 2, r). Prior to the amendments of 1940, the Commission in *Procedure under Barge Line Act*, 148 ICC 129, and this Court in *C. R. I. & P. Ry. Co.* v. *U. S.*, 274 U. S. 29, had occasion to consider the extent of the Commission's jurisdiction of through rail-and-water routes, these cases showing that plenary powers did exist. Under Section 15(3) as it read prior to the amendments of 1940 (Appendix 2, j), the Commission could not establish any route, classification, practice or rate when the transportation was *wholly* by water. The amendments of September 18, 1940, are shown in the body of the argument to have given the Commission authority over transportation wholly by water for the first time, but all of the provisions existing prior thereto which had already given the Commission plenary power over through rail-and-water routes, were, by rearrangement of section numbers, simply continued.

The provisions on which the barge lines rely, as effective before and after September 18, 1940, as later shown, have no application unless through routes do, in fact, exist.

6. Under the law as it existed prior to September 18, 1940, the Commission had occasion to consider many

applications of barge lines for through routes and joint rates. (There are ten decisions of the Commission, referred to in the body of our argument, in which applications of the Inland Waterways Corporation were considered, reference also being made to applications of other independent barge lines.) In these proceedings, the Commission gave careful consideration to the question of the reasonableness of the proposed through routes, stating definitely that the establishment of such through rail-and-water routes would be required only when shown to be necessary or desirable in the public interest (*Application of Inland Waterways Corporation*, 153 ICC 129, 133). The rearrangement of the law, continuing the jurisdiction which the Commission had theretofore had in connection with rail-and-water routes, retained the same test as to what would be a proper through rail-and-water route (see Sections 1(4), as amended, 15(3), as amended, and 305(b) and 307(d) as carried in Appendix).

7. A through route is defined by this Court. *St. L. S. W. Ry. Co.* v. *U. S.*, 245 U. S. 136, 139; see also *Great Northern Ry. Co.* v. *Sullivan*, 294 U. S. 458, 460.

There are no through routes between appellee barge lines and the rail carriers in connection with this grain movement (as to Mechling, R. 985; as to Inland Waterways Corporation, R. 1225, and its complaint, Section 10, R. 5; see also R. 1052).

8. A through route must exist before we have "connecting lines" under Section 3(4) of the Interstate Commerce Act (see Section 3(4), as amended, Appendix 2, g, and *Investigation of Seatrain Lines, Inc.*, 206 ICC 328, 343). The Commission specifically noted this point and correctly determined it (see 246 ICC 353, 380, this decision being carried at R. 19).

9. The amendments of September 18, 1940, added a provision to Section 3(1) of the Act (Appendix 2, f)

under which it was specifically provided that that paragraph should not be construed to apply to discrimination, prejudice or disadvantage to the traffic of any other carrier of whatever description. A similar provision was included in the sections governing the water carriers (see Sec. 305(c), Appendix 2, p). These provisions were correctly ruled upon by the Commission in its report in 246 ICC 353, at 363.

10. The order is not in contravention of the National Transportation Policy (Appendix 2, a). See *Mississippi Valley Barge Line Co.* v. *U. S.*, 292 U. S. 282, 288. The Act itself carries many provisions for differences in practices, rates, classifications and regulations, as between water-and-rail and all-rail traffic, which differences were not to be considered unjust (see Section 305 (c) and Section 3(1)). Provision for differentials between all-rail rates and joint water-rail rates is made in Section 307(d) (Appendix 2, q), and provision for special rail proportionals in connection with traffic to or from the port by water was provided for in 6(11) (Appendix 2, i). See also amendment to Section 15(a), considered in *Seatrain Lines, Inc.* v. *A. C. & Y. Ry. Co.*, 243 ICC 199, 214; see also *Naval Stores from Miss. to Gulf Ports*, 235 ICC 723, 733. The National Transportation Policy cannot be interpreted as foreclosing differences between varying kinds of transportation in view of provisions for such differences contained in the Act.

11. The varying proportional rates here involved east of the gateways to destinations in Central Territory were prescribed by the Commission in *Southwestern Millers League* v. *A. T. & S. F. Ry. Co.*, 225 ICC 195, in order to equalize origin areas and maintain gateway equalization. See Supplemental Report in this case, 231 ICC 130, 131. The practice by which grain shipped to a primary market is given, when shipped out, benefit of the low rate which normally would have applied if the grain had been shipped from country origin through to ulti-

mate destination, antedates the enactment of the Interstate Commerce Act. *A. T. & S. F. Ry. Co.* v. *U. S.*, 279 U. S. 768, 778. Pertinent problems connected with grain-rate structure were considered by this Court in *Board of Trade of Kansas City* v. *U. S.*, 314 U. S. 534, 537.

In considering the lawfulness of the suspended schedules, the Commission necessarily was concerned with their effect upon the entire grain-rate structure (see 248 ICC 307, 309-310, R. 52). It was not, as found by the Court (finding No. 23), concerned only with rates to Chicago. In addition, the Commission, at page 309 (R. top 51), referred to the earlier report where Division 2 stated that continuance of present conditions would result in a break-down of the all-rail grain-rate structure from adjacent origins in Illinois and Indiana. The matter in the earlier report thus referred to is set out in 246 ICC 353, 375, where the Division stated that continuance of present conditions would result in disruption of the "the grain-rate structure as far east as Painesville, and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore."

As stated by the Commission (248 ICC 307, 311):

> "To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned."

It would be futile for the Commission to prescribe an adjustment, as it did in *Southwestern Millers' League case, supra*, if it did not also have the power to protect such an adjustment, even by the circumscription of its use where necessary to prevent unintended and disturbing application.

12. The Commission has power to protect a reasonable rate adjustment. *Youngstown Sheet & Tube Co.* v. *U. S.*, 295 U. S. 476, 479. To accomplish this purpose,

the Commission may close a route. *Western Paper Makers' Chemical Co.* v. *U. S.*, 271 U. S. 268, 272.

13. The rail lines are not proper parties defendant. Section 46 of the Urgent Deficiencies Act (Appendix 2, s) provides for suit against the United States.

The relief prayed for against the individual rail lines, even if right to it existed, which we deny, is not within the jurisdiction of the specially constituted three-judge court. *Powell* v. *U. S.*, 300 U. S. 276; *U. S.* v. *Idaho*, 298 U. S. 105, 109; *P. & W. Va. Ry. Co.* v. *U. S.*, 281 U. S. 479, 488.

14. The Inland Waterways Corporation and A. L. Mechling, intervener, here protecting their competitive position, do not have a right upon which to base the action. *Alexander Sprunt & Son, Inc., et al.* v. *U. S.*, 281 U. S. 249, and other cases cited in body of argument.

ARGUMENT.

Court Review of an Order of the Interstate Commerce Commission Definitely Is Circumscribed.

In court review of an order of the Interstate Commerce Commission, the range of issues is narrow. In substance, they are:

(1) Did the order of the Commission violate the Constitution?

(2) Did the order of the Commission exceed the power conferred by the statute?

(3) Was the order of the Commission predicated upon essential findings supported by substantial evidence?

(4) Did the order of the Commission reflect erroneous application of the law?

(5) Was the order of the Commission entered without due hearing?

(6) Did the order of the Commission reflect an exercise of power so arbitrary as to virtually transcend the authority conferred?

These narrow limits of review have been clearly and definitely outlined by this court in a number of decisions among which are included: *I. C. C.* v. *Ill. Central R. R. Co.*, 215 U. S. 452, 470; *U. S.* v. *B. & O. R. R.*, 225 U. S. 306, 323; *Kansas City So. Ry. Co.* v. *U. S.*, 231 U. S. 423, 440; *I. C. C.* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547; *U. S.* v. *L. & N. R. R. Co.*, 235 U. S. 314, 320; *Pennsylvania Co.* v. *U. S.*, 236 U. S. 351, 361; *Board of Trade of Kansas City* v. *U. S.*, 314 U. S. 534; *U. S.* v. *Chicago Heights Trucking Co.*, 310 U. S. 344; *Virginian Ry. Co.* v. *U. S.*, 272 U. S. 658, 663; *Seaboard Air Line* v. *U. S.*, 254 U. S. 57, 62; *Rochester Tel. Corp.* v. *U. S.*, 307 U. S. 125.

This circumscription of the limits of judicial review of the orders of an administrative body is stated with particular clarity in the case last cited. We quote from page 139:

> "From these general considerations the Court evolved two specific doctrines limiting judicial review of orders of the Interstate Commerce Commission. One is the primary jurisdiction doctrine, firmly established in *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426. Thereby matters which call for technical knowledge pertaining to transportation must first be passed upon by the Interstate Commerce Commission before a court can be invoked. The other is the doctrine of administrative finality. Even when resort to courts can be had to review a Commission's order, the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. *Interstate Commerce Comm'n* v. *Illinois Central R. Co.*, 215 U. S. 452, 470; *Interstate Commerce Comm'n* v. *Union Pacific R. Co.*, 222 U. S. 541."

In the instant case, the issue outlined as No. 1, above requires no consideration for it was not raised by the complaints herein. As we shall explain, the assailed order of the Commission clearly and definitely met the other tests, and the court below erred in failing so to conclude.

A comparison of the findings of the District Court with the findings of the Commission shows that with minor exceptions the Court and the Commission reached similar conclusions as to the facts developed by the record. Upon these facts, the Commission concluded that the schedules in controversy would not operate in violation of Sections 1, 2 and 3 of the Interstate Commerce Act, and would not be otherwise unlawful. Upon

substantially the same facts, however, the court below concluded the the Commission had erred in its application of Sections 2 and 3, and found that the schedules would operate in violation of these sections and in violation of the congressional declaration of the National Transportation Policy expressed at the outset of the Interstate Commerce Act, as amended September 18, 1940. Appellants submit that the court below clearly exceeded the bounds of its narrow sphere of review when it substituted its judgment for the judgment of the Commission concerning the application of Sections 2 and 3 to the evidence developed on the record before the Commission. As we shall explain later, the Commission's application of these provisions of the governing statute was proper and in full accord with numerous expressions of this Court construing, and with the prior decisions of the Commission applying, these provisions.

It has been definitely determined by this Court that whether a preference, advantage, or discrimination is undue, unreasonable, or unjust, is a question of fact confided by Congress to the judgment and discretion of the Commission, and upon which the decision of the Commission is not to be disturbed unless it is shown that the Commission's conclusions are unsupported by evidence, made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. *Board of Trade of Kansas City* v. *U. S.*, 314 U. S. 534; *U. S.* v. *Chicago Heights Trucking Co.*, 310 U. S. 344; *Virginian Ry. Co.* v. *U. S.*, 272 U. S. 658, 663; *Seaboard Air Line* v. *U. S.*, 254 U. S. 57, 62.

A court may not substitute its judgment as to the existence of preference for the judgment of the Commission where there is no dispute concerning the facts. *U. S.* v. *L. & N. R. R. Co.*, 235 U. S. 314, 320.

To consider the weight of evidence, the soundness of

the Commission's reasoning, or even whether the Commission's findings in the case at bar are consistent with findings made by the Commission in other cases is beyond the province of the Court. *Virginian Ry. Co.* v. *U. S.*, 272 U. S. 658, 663; *Georgia P. S. Commission* v. *U. S.*, 283 U. S. 765, 775.

From the principle announced by the decisions cited above, it is evident that the proper sphere of review for the court below did not comprehend consideration of the Commission's application of Sections 2 and 3 of the Interstate Commerce Act to its findings of fact when the court below was in substantial agreement with these findings. The determination by the Commission that the suspended schedules would not contravene the provisions of Sections 2 and 3 of the Act was final. Even though upon the same evidence in an original proceeding before it, the court might have reached conclusions concerning the application of Sections 2 and 3 different from the conclusions reached by the Commission, the court may not substitute its judgment for the judgment of the Commission with respect to the application of these sections where, as here, there is no error in other matters properly subject to judicial review.

As this Court aptly stated in *Rochester Tel. Corp.* v. *U. S.*, 307 U. S. 125, at page 146:

> " 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286-287; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 303 *et sequitur*."

The Assailed Order of the Commission Was Supported by Essential Findings Predicated Upon Substantial Evidence.

The court below considered the evidence before the Commission and, generally speaking, made findings of

fact which corresponded in substance to the findings of the Commission, although from such facts the court reached conclusions concerning matters of preference, prejudice and discrimination contrary to the conclusions reached by the Commission. From this alone it should be apparent that the Commission did make the necessary findings upon the evidence before it.

We have outlined in Appendix 4 the substance of the various findings of the Commission as reflected in the report of Division 2 (R. 19), dated July 31, 1941, and in the report of the entire Commission (R. 47), dated December 1, 1941. These findings were predicated upon evidence which we have summarized heretofore in our statement of case, wherein appropriate record references are given.

The essential findings upon which the Commission's order was predicated are scattered throughout the two reports of the Commission. (The findings in both reports except as the findings of the earlier report were modified or clarified by the later report, should be considered together. *Penn Anthracite Mining Co.* v. *D. & H. R. Corp. et al.*, 16 Fed. Supp. 732, 734.) As this Court recognized in *U. S.* v. *B. & O. R. Co.*, 293 U. S. 454, 465, the Commission is not called upon to make formal and precise findings of each and every fact. It is not necessary for the Commission to set out all of the evidence. Its findings must simply be "basic or essential." *Visceglia* v. *U. S.*, 24 Fed. Supp. 355, 357. See also *Manufacturers' Ry. Co.* v. *U. S.*, 246 U. S. 457, 487.

Differences between Court and Commission.

The most important difference between court and Commission was the conclusion of the court that since the physical carriage beyond the reshipping point

icago) was substantially the same for ex-barge, ex- and ex-lake grain, the ex-barge grain should not be uired to pay a greater charge for reshipping from cago than would ex-rail, or ex-lake grain. The court, n an examination of the record, found that little or grain moved into and out of Chicago in continuous ough movement, the inbound service coming to an by delivery of the grain into an elevator at Chicago, e commonly passing to a purchaser at that point, with outbound movement coming later as an independent nsaction (court's finding No. 3); found that the pur- se price at Chicago was on a delivered basis, the pper of the inbound movement assuming the trans- tation cost and reaping any saving therein (finding . 6), so that the outbound shipper would have no ing available to offset any difference in the out- nd factor (finding No. 18); found that any saving ributable to the inbound shippers would not enable m to undersell at the Chicago market (finding No.); considered the Commission's finding to the effect at the physical carriage beyond the reshipping point s substantially the same (finding No. 19); and noted at the inbound and outbound charges, barge-rail, were t factors of a through rate, all of which were on file th the Commission (findings Nos. 20 and 21). The urt then concluded that since the ex-barge grain would y a greater charge upon reshipment from Chicago for service which the court viewed as substantially the me service east from Chicago as accorded ex-rail and -lake grain (findings Nos. 24 and 19), such a situ- ion would result in less incentive than at present r a shipper to use barge service to Chicago (finding . 25), and that this would have an adverse effect on e grain producers enjoying barge transportation (find- g No. 26), and that such treatment would result in a llification of a consistent National Transportation

Policy to further the improvement of the Inland Waterways (finding No. 28). The court felt that the Commission took no evidence as to, and did not consider the effect of, such a situation with reference to Section 3(4) of the Act, as amended, and the National Transportation Policy (finding No. 31). The court concluded further that the action of the Commission was an attempt to bring about a cartelization of barge and rail transportation (finding No. 29).

From all of the above, the court reached its conclusion of law (No. 4) reading:

> "The order of the Interstate Commerce Commission discriminates against water competition by the users of barges."

In only one respect did the court consider that there was no evidence in the record to support the Commission, this being the comment by the court in the first sentence of its finding No. 18, reading:

> "There is no evidence in the record to support the finding of the Commission that the proposed schedules will not prohibit the movement by barge-rail, even to trunk-line territory."

It is clear that the court regarded the inbound movement as completely separate and distinct from the outbound movement, and in applying rates to outbound movement, separately considered, proposed that differences in rates should not be made to depend upon considerations pertaining to the inbound portion of the transportation. The court was concerned neither with origin areas, methods of transportation, nor charges connected with such inbound movements.

The Commission in its findings (Appendix 4) treated with this point in quite some detail, and we respectfully refer the Court to the Commission's findings, particu-

larly the statement in the final report (248 ICC 307 at 311), reading:

> "Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service."

The court erroneously found that the breakdown in the rail rate structure referred to by the Commission related to the publication by western lines of low intrastate rates *to Chicago* (finding No. 23). As shown by the Commission's findings, and as we point out later herein, the Commission was concerned with the rate level within Official Territory and with the grain rate structure as it applied to movements therein and from other territories.

The court in finding No. 1 erred in its understanding of the application of the proportional rates from Chicago to the territory east of Central Territory. The court stated that such proportional rates apply to grain received over any route from any origin, whence the inbound interstate rates via rail are at least 8.5 cents. Note 20 (Appendix 1-a) provides that the proportional rates apply only when there are no joint through commodity rates in effect in connection with the inbound carrier via the reshipping point. It is shown by Exhibit 13, R. E. 60, introduced R. 237 that there are joint through commodity rates from the Illinois origins and that the so-called "specifics" from the Illinois origins to Chicago are unpublished (R. 248) portions of these one-factor through commodity rates (see also discussion of this matter in decision of Division 2, 246 ICC 353, 356). Further, a provision in Note 20 reads:

> "In no case shall the combination through rate to and from the reshipping point via rail be less than the local rate from the reshipping point to destination, etc."

While this furnishes a limitation pertaining to rail grain, it does not apply when the inbound movement is via water (see decision of Division 2, 246 ICC 353, bottom of 375).

In finding No. 15, the court stated that the Commission made no finding as to inbound barge rates on ex-barge grain from St. Louis and Kansas City, or as to the movement of such ex-barge grain. The Commission has held that the only issue in an Investigation and Suspension proceeding, which this was, is the lawfulness of the tariff schedules proposel. *Livestock to Eastern Destinations*, 156 ICC 498; *Freight Rates from Minneapolis*, 32 ICC 361, 367. In the decision of the entire Commission, page 311, the Commission stated:

> "It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations."

In a later section of our brief, we treat with the extent and nature of the Commission's jurisdiction over rail-and-water transportation as that jurisdiction existed prior and subsequent to the amendments of the Interstate Commerce Act, made September 18, 1940. We respectfully submit that a consideration of that material will show that, on this problem, the Commission in this proceeding could have done nothing further than to call attention to the fact that these matters could be considered and passed on in a proper proceeding.

We have here referred to all of the differences which do exist between Court and Commission. Hereinafter we show that the findings of the Commission above referred to were made with proper application of the law that the order fully met the proper tests to which it should have been subjected by the Court. We show also not only that the Court went beyond the proper limits of court review of orders of the Interstate Commerce Commission, substituting its judgment for that of the Commission in connection with regulation of interstate commerce, but also that, in so doing, the court drew conclusions from the evidence which were inconsistent with proper construction and application of the governing statute to the evidence, and which, in practical operation, would destroy the effectiveness of certain essential elements of rate structures built up by the Commission.

Proportional Rates Differing Among Themselves, and From Local Rates, Do Not, Ipso Facto, Cause Unjust Discrimination.

An important question raised by the Court's findings of fact supporting its conclusions of law has to do with the nature, construction and application of proportional rates. The Court found that little or no grain moves into and out of Chicago in continuous through movement, that the inbound service, whether by rail, barge or lake steamer, comes to an end by delivery of the grain into an elevator. The Court concluded, therefore, that the maintenance of varying levels of proportional rates for substantially the same service eastbound from Chicago, dependent for application upon circumstances affecting the movement of the grain inbound to Chicago, constituted undue discrimination in contravention of Section 2 of the Interstate Commerce Act (Appendix 2-e) (Title 49 U.S.C.A., Sec. 2).

That section prohibits any common carrier from charging any person a greater or less compensation for services rendered than it charges another:

> "* * * for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions."

Before varying rates for substantially the same transportation service may be deemed to be in contravention of this section, three things must appear:

(1) There must be a like and contemporaneous service;

(2) In the transportation of a like kind of traffic;

(3) Under substantially similar circumstances and conditions.

I. C. C. v. *B. & O. R. R. Co.*, 145 U. S. 263, 281.

All of the circumstances and conditions attendant upon the handling of the traffic, including prior or subsequent movements, must be considered to determine whether discrimination is unjust and therefore unlawful. *T. & P. Ry. Co.* v. *I. C. C.*, 162 U. S. 197; *I. C. C.* v. *B. & O. R. R. Co*, 145 U. S. 263, 281; *Clover Splint Coal Co., Inc.* v. *L. & N. R. Co.*, 197 ICC 276.

This Court has recognized that the service rendered in transporting local traffic between two points is not in law identical to the service rendered in transporting between the same points, through traffic which originates or terminates beyond, or which originates and terminates beyond. *Union Pac. Ry. Co.* v. *U. S.*, 117 U. S. 355, 363.

This Court has recognized that a proportional rate is necessarily part of a through rate and capable of use only as such. *Great Northern Ry. Co.* v. *Sullivan*, 294 U. S. 458, 460. See also *Hocking Valley Ry. Co.* v. *Lackawanna Coal and L. Co.*, 224 Fed. 930 at 931. In numerous decisions of the Commission, this principle has been recognized and followed. *Board of Trade of Kansas City, Mo.* v. *A. T. & S. F. Ry. Co.*, 69 ICC 185, 188; *Kansas City Transportation Bureau* v. *A. T. & S. F. Ry. Co.*, 16 ICC 195, 201; *Frederichsen Floor & Wall Tile Co.* v. *A. C. L. R. Co.*, 146 ICC 786, 791; *Morrel & Co.* v. *N. Y. C. R. Co.*, 104 ICC 104, 128; *Cairo Board of Trade* v. *C. C. C. & St. L. Ry. Co.*, 46 ICC 343, 348.

Since the movement of through traffic between two points is not the movement of like traffic under substantially similar circumstances and conditions as the movement of local traffic between the same two points, and since the rates for the movement of such through traffic, proportional rates, are necessarily parts of through rates capable of use only as such, it is clear that proportional rates may differ from the local rates on the same traffic

between the same points, without creating the unjust discrimination prohibited by Section 2. This is true even though part of the total transportation is by carriers not subject to the jurisdiction of the Commission. This Court has so held.

In *Texas & Pac. Ry. Co.* v. *I. C. C.*, 162 U. S. 197, a proceeding wherein an order of the Interstate Commerce Commission was assailed, this Court had occasion to determine whether it was lawful to provide rates for application on export and import traffic which were lower than the rates for application on domestic traffic moving between the same points. The Commission had found that since it did not have jurisdiction over the movements of the export and import traffic beyond the ports, or the charges therefor, it could not consider the circumstances and conditions of such movements beyond the ports to distinguish the movements of such traffic for the hauls within its jurisdiction from the movements of domestic traffic for the same hauls within its jurisdiction. This Court held that the Commission had erred in failing to consider the differentiating circumstances and conditions, even though they related to portions of the through transportation over which the Commission had no jurisdiction, and concluded that because of the existence of such different circumstances and conditions affecting the movement of export and import traffic, the provision of rates on such traffic at variance from the local rates on domestic traffic between the same points did not create undue discrimination.

In *News Syndicate Co.* v. *N. Y. C. R. R. Co.*, 275 U. S. 179, and *Great Northern Ry. Co.* v. *Sullivan*, 294 U. S. 458, this Court considered orders of the Commission awarding reparation on shipments moving from points in Canada to points in the United States. In the former case, the traffic had moved on single factor joint through

rates. The American carriers had not established proportional rates from the border to destinations in the United States. The Commission found that the complainants had been damaged by the failure of the American carriers to establish proportional rates and by the exaction of excessive through charges, and awarded reparation measured by the extent of the unreasonableness of the through charges. This Court held that even though the Commission did not have jurisdiction over the portions of the hauls within Canada or over the rates therefor, it did have jurisdiction to determine whether the complainants had been damaged and, having so found, to measure the damage by the extent of unreasonableness of the through charges. In the later case, proportional rates from the border had been published and the traffic had moved thereon. The complaint had assailed these proportional rates only. The Commission found the assailed rates unreasonable and awarded reparation without finding specifically that the through charges based upon the unreasonable proportional rates from the border and proportional rates from the Canadian origins to the border were excessive. This Court stated (page 460) that "each proportional rate necessarily was a part of the through rate and was capable of use only as such," and held that, despite the unreasonableness of the proportional rates, the award of reparation was improper in the absence of a finding that the combinations of the assailed proportional rates and the Canadion proportional rates were unreasonable. In other words, the lawfulness of charges for transportation subject to the jurisdiction of the Commission which is but part of total transportation must be determined by consideration of the factors, including the total charges, affecting the total transportation.

In many cases the Commission has been called upon to prescribe or approve rail rates in the nature of pro-

portional rates for application on traffic moving beyond by carriers not subject to its jurisdiction. In all of these cases, even though it was only prescribing or approving and even though it had jurisdiction only to prescribe or approve, rates for the rail segments of the total transportation, the Commission considered all of the circumstances and conditions surrounding the total movements and found that such circumstances and conditions alone distinguished such traffic from other traffic moving between the same points over the same rail segments. *Central Pennsylvania Coal Producers' Asso.* v. *B. & O. R. Co.*, 196 ICC 203, 235; *Rates on Bunker Coal*, 73 ICC 62, 75; *Sand, Gravel & Crushed Stone to Southern Illinois*, 160 ICC 507, 524; *Ex-lake Iron Ore from Chicago to Granite City*, 120 ICC 75, 78, s.c. 123 ICC 503; *Maritime Association of Boston* v. *A. A. R.*, 95 ICC 539, 572; *Bituminous Coal to Youngstown*, 197 ICC 617, 625; *Lumber from San Francisco Bay Points When From Beyond*, 78 ICC 760, 766-767; *Washington Coal Producers' Asso.* v. *U. P. R. R. Co.*, 129 ICC 499, 500; *Alan Wood Steel Co.* v. *Alabama G. S. R. Co.*, 190 ICC 3, 10; *Buffalo Grain Case*, 46 ICC 570; *Universal Atlas Cement Co.* v. *Wabash Ry. Co.*, 210 ICC 494, 495; *Beaver Portland Cement Co.* v. *California Central R. Co.*, 200 ICC 691. In several of these cases, particularly *Lumber from San Francisco Bay, supra*, and *Alan Wood Steel Co., supra*, the water carriers were not even common carriers.

In other words, to determine the lawfulness of proportional rates, consideration must be afforded to all of the circumstances and conditions affecting the through movement of the traffic, circumstances and conditions which attach inescapably to proportional rates, irrespective of whether or not all parts of the total movement are subject to the jurisdiction of the Commission; such determination may not be limited to consideration only

of the character of the physical transportation between the points between which the proportional rates apply.

Several years ago, an issue similar in many respects to the one here presented, was before the Commission in *Ex-River Grain from St. Louis to the South*, 203 ICC 385. That case concerned the lawfulness of schedules published by rail carriers operating from Mississippi River ports and gateways to the South restricting the application of their proportional rates on grain so as not to apply on ex-barge traffic. In approving the schedules as not unlawful, the Commission pointed out that, while there was no substantial difference between the transportation services performed on the ex-river traffic and on ex-rail traffic from the same gateway river ports, "the service in the transportation of ex-rail and ex-river traffic is not under substantially similar circumstances and conditions." The only material distinction between the situation presented in that case and the situation here presented, is that in that case the proportional rates from the gateway river ports did not vary dependent upon the origin of the traffic.

Since proportional rates are but factors of through rates, since the lawfulness of proportional rates must be determined by the circumstances and conditions affecting the through transportation, and since proportional rates may properly differ from rates for local transportation between the same points, it follows inevitably that proportional rates between the same points themselves may vary, dependent upon variations in the circumstances and conditions affecting the through transportation to which they apply.

The Commission has considered proportional rates which varied in amount dependent upon the origin of the traffic and consistently has held that such rates were not unlawful. *Export Rates on Grain and Grain Products*, 31 ICC 616, 619, and earlier cases there cited;

Southern Kansas Asso. v. *C. R. I. & P. Ry. Co.*, 139 ICC 641, 672; *Central Pennsylvania Producers' Coal Asso.* v. *B. & O.*, 196 ICC 203.

In *Southwestern Millers' League* v. *A. T. & S. F. Ry. Co.*, 225 ICC 195, the Commission prescribed proportional rates from Chicago to Central Territory on grain from the Northwest which differed from the proportional rates prescribed from the same gateway to the same common destinations on grain from Trans-Mississippi River Territory. These varying proportional rates for substantially the same transportation service were prescribed in order to work out proper through charges from the two origin areas to this common destination area, and were proper because of differences in circumstances and conditions surrounding the inbound movements.

Likewise, the circumstances and conditions—the origin of the traffic, its method of carriage to Chicago, the charges for such carriage, and the extent of the service—surrounding the transportation of grain originating at points in Illinois and moving to Chicago by barge via the Illinois Waterways are quite different from the circumstances and conditions surrounding the transportation of grain originating in the Northwest or in Trans-Mississippi River Territory or originating in Illinois and moving to Chicago by other forms of transportation; consequently the circumstances and conditions surrounding the total transportation via Chicago to destinations east thereof are dissimilar even though the part of the transportation beyond Chicago may be substantially the same. Therefore, the provision of different rates for substantially the same transportation service east from Chicago dependent upon the origin of the traffic and the other circumstances surrounding its movement to Chicago does not contravene the provisions of Section 2.

No clearer statement of the lawfulness under Section 2 of the Act of proportional rates for substantially the same transportation service, varying in accordance with differences in the circumstances and conditions affecting the transportation beyond, will be found, than in the report of the Interstate Commerce Commission in *Central Pennsylvania Coal Producers' Asso.* v. *B. & O. R. Co.*, 196 ICC 203,* which concerned the lawfulness of varying levels of trans-shipment rates on bituminous coal from mines to ports on the eastern seaboard. We quote at length from page 235 of the Commission's report:

> "Except as to traffic to nonadjacent foreign countries, the operators allege that the maintenance to ports of Philadelphia and Baltimore of trans-shipment rates which are different for inside-the-capes than for outside-the-capes traffic, contravenes the provisions of section 2 of the Act. As previously stated, the rail service rendered all transshipment coal is substantially the same. The coal, which is charged the outside-the-capes rates, other than that which is exported, usually moves to New York Harbor or to New England, and that charged the higher inside-the-capes rates generally moves a relatively short distance by water to points within the respective harbors. Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed. We have found on various occasions that proportional rates which vary in amounts depending on the origins or destinations are not unlawful because of that fact. *Southern Kansas Grain Asso.* v. *C. R. I. & P. Ry. Co.*, 139 ICC 641. Transshipment rates are also similar to export rates in that we have no jurisdiction over the transpor-

* In a subsequent report, *State of New Hampshire* v. *B. & O. R. R. Co.*, 201 I. C. C. 445, certain of the prior findings relative to another phase of the litigation, the all-rail rates to New Hampshire, were modified.

tation which takes place beyond the transshipment piers. We have found that the maintenance of different export rates from the same origin to the same port, dependent upon the foreign destination, is not unlawful. *Western Export Iron and Steel Case,* 43 ICC 129. In *Detroit* v. *C. & O. Ry. Co.,* 77 ICC 98, division 1 found, among other things, that a rate on coal from mines in West Virginia to Toledo, for transshipment to Detroit, Mich., which was higher than on coal destined to certain west-bank Lake Michigan and Lake Superior ports, was not unjustly discriminatory. It is significant that transshipment rates to the ports of Philadelphia and Baltimore, varying according to whether the destination of the traffic was within or beyond the capes, have been maintained for over a quarter of a century without complaint under section 2 of the act, although they have been assailed under other sections of the act by various interests, including these complainants. The latter, in the Eastern Bituminous Coal case, sought outside-the-capes rates that would have widened the spread under the inside-the-capes rates that then existed and still exist. Upon the facts of record we are of the view that the transshipment rates assailed are not unjustly discriminatory."

Appellants respectfully submit that the court below failed to recognize these principles governing the operation of Section 2 insofar as proportional rates are concerned when it treated the proportional rates from Chicago to Central Territory and to the East as rates for separate and distinct transportation services from Chicago unrelated to the transportation serviced inbound to Chicago. Appellants submit further that the assailed order of the Commission enjoined by the court below was based upon a recognition and proper application of these principles and, therefore, that the said order was not arbitrary or in excess of the statutory power of the Commission and should not have been enjoined.

Interstate Commerce Commission Properly Construed and Applied the Interstate Commerce Act as Amended September 18, 1940.

y legislation enacted September 18, 1940, the Inter-e Commerce Act was amended in several respects. icularly by a congressional declaration of national sportation policy and by modifications of Section 3. barge lines contend that the Interstate Commerce as thus amended, affords them a right to maintain action, and that the assailed order of the Inter-e Commerce Commission should be enjoined because as predicated upon evidence all of which was taken r to the enactment of these amendments, and because effect of the order contravenes these provisions of act, particularly Section 3(4).

'e submit that these contenions are unsound and that court below erred in accepting them as valid and predicating thereon, in part at least, its decree en-ing and setting aside the assailed order of the Com-sion.

n analysis of the amendments and of the practical nges which they effected in the provisions of the In-tate Commerce Act, will indicate clearly that so far the contentions of the barge lines are concerned. amendments in practical effect did nothing more n restate and set up in somewhat different order visions which had been in effect for many years r thereto.

he Panama Canal Act, enacted August 24, 1912 (c. Sec. 11, 37 Stat. 568), empowered the Commission egulate the transportation of property from point oint in the United States by rail and water through Panama Canal or otherwise, when the transportation by common carriers, to require the establishment

of physical connections between such rail and water carriers, to establish through routes and joint rates between such carriers, and to determine all the terms and conditions under which such carriers should be operated in the handling of such traffic. By the Panama Canal Act, the Commission also was given authority to establish proportional rates by rail to or from the port and to determine to what traffic and in connection with what vessels and upon what terms and conditions such proportional rates should apply, and proportional rates were therein defined as:

> "By proportional rates are meant those which differ from the corresponding local rates to or from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

The empowering provisions of the Panama Canal Act were subsequently included as Section 6(13) of the Interstate Commerce Act (c. 91, Secs. 409, 412, 413, 41 Stat. 383; Title 49 U.S.C.A., Sec. 6(13)). We carry as Appendix 2-h Section 6(13) as it read prior to the amendments of 1940.

The amendments enacted September 18, 1940, modified Section 6(13), derived from the Panama Canal Act. The effect of these amendments, however, was merely to transfer the substance of the material in Section 6(13) (b) to Section 1(4) of the Interstate Commerce Act, to transfer the substance of sub-paragraph (d) to Section 6(12), and to renumber the remainder. We carry as Appendix 2-i this section which became 6(11) as amended, and as Appendix 2-c, Section 1(4) of the Act as it read before and as Appendix 2(d) the paragraph as amended.

June 3, 1924, the Inland Waterways Corporation Act was passed (c. 243, Secs. 1 to 6, 43 Stat. 360). This

enactment is carried in Title 49, U.S.C.A., Sections 151 to 156, inclusive. Among other things, this Act (as amended 45 Stat. 980) provided for the certificating of common carriers by water who desired to participate with rail carriers in through routes and joint rail-and-water rates, empowered the Commission to require the establishment of through routes and joint rates between certificated water carriers and railroads, provided that the Commission should prescribe such reasonable differentials between all-rail rates and joint rail-and-water rates as it found justified, and further empowered the Commission to fix divisions of such rail-and-water rates. These various provisions were contained in Section 3(e) of that Act. We carry as Appendix 2-r, Section 3(e), as it read prior to September 18, 1940.

The amendments of September 18, 1940, repealed Section 3(e) of this Act, but carried the substance of this paragraph in amendments to the Interstate Commerce Act effected concurrently. Said repealing act contained the following proviso (c. 722, Title 2, Sec. 201, 54 Stat. 950; Title 49 U.S.C.A., Sec. 153):

> "Provided, however, that (1) any certificate of public convenience and necessity granted to any carrier pursuant to the provisions of such sub-section (e) shall continue in effect as though issued under the provisions of Section 309 of the Interstate Commerce Act (909 of this Title), as amended; and (2) through routes and joint rates, and rules, regulations, and practices relating thereto, put into effect pursuant to the provisions of such sub-section (e) shall, after the repeal of such sub-section (e), be held and considered to have been put into effect pursuant to the provisions of the Interstate Commerce Act (Chapters 1, 8 and 12 of this Title), as amended."

The provisions requiring the procurement of certificates of public convenience and necessity by water carriers, as modified in a manner not here important, are carried in Section 309(a) of the Interstate Commerce Act (U. S. Code, Title 49, Sec. 909). The provisions for through routes and joint rates with reasonable rules, regulations and practices were transferred to Section 1(4) and Section 305(b) (U. S. Code, Title 49, Secs. 1(4) and 905). The requirement that the Commission should fix reasonable differentials between the all-rail rates and the joint rates in connection with said water service was carried into Section 307(d) (U. S. Code, Title 49, Sec. 907(d)). The Commission's authority over divisions of the joint water-rail rates is now provided in Section 15(6) (U. S. Code, Title 49, Sec. 15) and Section 307(e) (U. S. Code, Title 49, Sec. 907(e)).

Following the enactment of the Inland Waterways Corporation Act, the Interstate Commerce Commission instituted an investigation, *Procedure under Barge Line Act*, 148 ICC 129, to determine just what its procedure should be under that Act. In that case the Interstate Commerce Commission carefully considered the extent of its authority over through rail-and-water routes prior and subsequent to the adoption of that Act. In *C. R. I. & P. Ry. Co.* v. *U. S.*, 274 U. S. 29, this court reviewed the extent of the jurisdiction of the Interstate Commerce Commission over rail-and-water routes as that jurisdiction had existed for some time prior to the amendments of September 18, 1940. These cases make it clear that the Commission, prior to September 18, 1940, had plenary powers in connection with any through rail-and-water routes.

Following the Commission's decision in *Procedure under Barge Line Act, supra,* various applications for through routes and joint differential rates were made by

the Inland Waterways Corporation and considered by the Commission in Ex Parte 96.* Other privately owned barge lines also filed similar applications.**

In these proceedings the Commission gave very careful consideration to the question of the reasonableness of the proposed through routes, including the circuity thereof, and to the further question whether such through routes would be in the public interest. The Commission stated very definitely that the establishment of such through rail-and-water routes would be required only when they were shown to be necessary or desirable in the public interest (see 153 ICC 129, at 133).

When the provisions of the Inland Waterways Corporation Act were incorporated into the Interstate Commerce Act by the amendments of September 18th, 1940, the test of what through routes should be established remained the same (see Sec. 1(4), as amended, Sec. 305(b), Sec. 15(3) and Sec. 307(d)).

So far as water carriers were concerned, the effect of the amendments of September 18, 1940, was to subject their independent operations, wholly by water, theretofore specifically excluded from regulation by Section 15(3) of the Act, to regulation by the Commission. The amendments did not alter materially the jurisdiction which the Commission long had enjoyed over the operation of water carriers when participating in through routes with rail carriers. The amendments did not, as the barge lines seemingly contend and as the court below inferred, appreciably change the existing provisions governing the establishment and regulation of

* These applications of the Inland Waterways Corporation are passed on in: 153 ICC 129, 156 ICC 141, 161 ICC 207, 163 ICC 716, 167 ICC 385, 172 ICC 525, 174 ICC 477, 181 ICC 675, 192 ICC 173, and 192 ICC 663.

** The applications of Mississippi Valley Barge Line Co. were considered by the Commission in Ex Parte 99, the first report being carried in 167 ICC 41. Applications of the American Barge Line were considered in Ex Parte 102, the first report being carried in 182 ICC 521.

through routes between rail and water carriers and of the joint or proportional rates applicable thereto, nor did the amendments cause the creation of new through routes.

We now consider the question whether there were, in fact, through routes between the barge lines operating on the Illinois Waterways to Chicago and the rail carriers operating east from Chicago, for the through movement of Illinois grain by barge to Chicago and rail beyond, for, as thereafter will be shown, the provisions of the statute upon which the barge lines here seek to rely, as effective prior and subsequent to September 18, 1940, have no application unless such through routes do, in fact, exist.

What Is a Through Route.

A through route has been defined by this Court as follows (see *St. L. S. W. Ry. Co.* v. *U. S.*, 245 U. S. 136, at the bottom of page 139):

> "A through route is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a 'through rate.' This 'through rate' is not necessarily a 'joint rate.' It may be merely an aggregation of separate rates fixed independently by the several carriers forming the 'through route'; as where the 'through rate' is 'the sum of the locals' on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. * * * But even where the through route and through rates are matters of express agreement between the carriers, a continuous 'joint rate' does not always extend from the point of origin to point of destination. There may be, on the 'through route' an intermediate point at which, in common railroad practice, the rate 'breaks.' That is,

> the 'joint rate' from the point of origin ends at this 'rate-breaking point,' and there is charged for the distance beyond the same local rate or joint rate that would have been charged had the business originated at this intermediate point. That is, instead of a 'joint through rate,' there is a 'combination.' "

The Supreme Court in *Great Northern Ry. Co.* v. *Sullivan,* 294 U. S. 458, states at page 460:

> "Combination rates (the sum of proportional rates—see p. 459) necessarily reflect agreement, express or implied, between the connecting carriers to establish a through route for continuous carriage from origin on one to destination on the other."

A carrier cannot be considered a "connecting carrier" merely because its operations extend up to a certain point beyond which we find the lines of many other carriers. Something more than mere propinquity is necessary. To demonstrate that the physical situation does not determine the question of what is or is not a "connecting carrier" we refer to *Augusta S. R. Co.* v. *Wrightsville & T. R. Co.,* 74 Fed. 522, in which case it is shown that the carriers did have an arrangement for a through route and were connecting carriers, although they had no physical connection. In *C. I. & L. Ry. Co.* v. *U. S.,* 270 U. S. 287, the Supreme Court, at page 293, states:

> "Direct physical connection with the carrier subjected to prejudice is not essential."

There Are No Through Routes Between the Barge Lines and the Rail Carriers.

During the course of the hearings before the Commission, witnesses representing the Mechling Barge Lines (R. 985) and the Inland Waterways Corporation (R. 1225) freely admitted that these barge lines had no arrangements with rail carriers for through routes on

grain transported by their barges to Chicago and thence east by rail. In its complaint filed in the court below, the Inland Waterways Corporation averred (Sec. 10, page 5) (R. 5), that in the course of its business it transported grain to Chicago via barge, and stated:

> "said interstate transportation is conducted on a port-to-port basis without any common arrangement with carriers beyond Chicago for through transportation."

A Through Route Must Exist Before We May Have "Connecting Lines" Under Section 3(4).

The appellee barge lines contend that the Commission acted arbitrarily and exceeded its statutory power in failing to make a specific finding regarding the application of Section 3(4) as amended September 18, 1940, to the schedules in controversy. This section, as thus amended, reads as follows:

> "(4) All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines and shall not discriminate in their rates, fares and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title."

The amendment merely renumbered a section which had been carried theretofore for many years as Section 3(3) of the Interstate Commerce Act and added a sentence—the last sentence above quoted—defining the term "connecting line."

This section requires all carriers, subject to the provisions of the Act, to:

> "1. afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines;
>
> "2. not discriminate in their rates, fares and charges between connecting lines; and
>
> "3. not unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper."

It is to be noted particularly that the provisions of this section apply only to "connecting lines." Before carriers may be termed "connecting lines," they must join in "through routes" for the through movement of traffic over their respective lines. This was made clear by the Commission in *Investigation of Seatrain Lines, Inc.*, 206 ICC 328, where consideration was given to the application of the section prior to the amendment of 1940 to a situation where rail carriers had refused to furnish facilities for the interchange of traffic (in this instance, the interchange of freight cars) with a water carrier equal to the facilities which they furnished for the interchange of traffic with other rail carriers. The Commission specifically found (page 343) that there was nothing in this or in any other section of the act which imposed any duty upon the Commission, or gave that body any authority, to require facilities for the interchange of traffic between rail and water carriers equal to the facilities maintained for the interchange of traffic between the same rail carriers and other rail carriers *where through routes between such rail and water carriers do not exist.* In a subsequent decision in the same case (237 ICC 97, 101), the Commission found upon new

evidence that through routes between the rail and water carriers in fact did exist, and because of this finding, and only because of it, the Commission then concluded that it had jurisdiction to require, and did require, the establishment of equal facilities for interchange.

The duty to furnish equal facilities for interchange with connecting lines, the duty not to discriminate in rates between connecting lines, and the duty not to prejudice connecting lines in the distribution of unrouted traffic, are all set out in this same section, and are equal rights of "connecting lines." This case of Seatrain Lines makes it clear that before we consider the performance of the duty, we must have a "connecting line" and that a "connecting line" cannot exist until there is shown to be a through route. This case makes it clear also that, where through routes existed, the Commission had the power and was required, prior to the amendments of September 18, 1940, under the section then designated as 3(3), to prevent discrimination, preference and prejudice between connecting rail and water carriers.

In the first decision of the Commission in the present case, this point was recognized. In 246 ICC 353, at page 357, it was found that the Mechling Barge Line had no agreement with respondents with respect to the shipment of grain beyond Chicago, and at page 363, it was found that the Federal Barge Line (Inland Waterways Corporation) had no arrangement with respondents for a through route. It was also found at page 380:

> "To now conclude that the suspended schedule should be found not justified would, in effect, be recognizing a common arrangement between the barge lines and the rail carriers for a continuous through route, despite the fact that the evidence definitely shows none exists. A common arrangement cannot be inferred."

Section 3(1) of the Interstate Commerce Act (Title 49 U.S.C.A., Sec. 3, Par. 1) prohibits undue or unreasonable preference and prejudice. This section was amended September 18, 1940, by the addition of a clause providing specifically:

> "that this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

The barge lines as carriers cannot invoke the provisions of this section in any respect whatsoever. In its initial report, at page 363, the Commission so found. Nor can these barge lines invoke the provisions of Section 3(4) governing the matter of preference, prejudice, and discrimination between carriers because that section has application only where there are "connecting lines," *i.e.*, where through routes have been established. The barge lines have no through routes with the rail carriers for the transportation of this grain traffic, and, therefore, are not "connecting lines."

The barge lines may contend that Congress intended that Section 3(4) should operate to prevent preference, prejudice, or discrimination against any and all carriers because Congress specifically excluded all carriers from the protection afforded by Section 3(1). Such a broad construction of Section 3(4) necessarily would make all carriers "connecting lines," and that would be tantamount to the creation of all conceivable through routes. But other provisions of the statutes (Secs. 1(4), 305(b), 15(3) and 307(d)) require the establishment only of those through routes between rail and water carriers which are found by the Interstate Commerce Commission to be just and reasonable and in the public interest. Surely Section 3(4) should not be so construed as to nullify these other provisions of the statute.

Since the provisions of Section 3(1) do not apply to carriers, and since the provisions of Section 3(4) do not apply to carriers other than "connecting lines," in which category the barge lines may not be classified, the barge lines could not invoke the provisions of this section to indicate before the Commission any unlawfulness in the schedules in controversy, and could not invoke the provisions of this section as a ground for their action against the order of the Commission. Since the section had no application, the Commission had no occasion to take any evidence regarding the issue sought to be raised by the barge lines under this section after the amendment of September 18, 1940, nor, as a matter of law, was it necessary for the Commission specifically to make a negative finding that the provisions of Section 3(4) did not govern the determination of the issues properly before the Commission.

We submit that, with respect to Section 3(4), the Commission did not exceed its statutory power or act arbitrarily in refusing to grant a further hearing after the amendments of September 18, 1940, became effective, and did not err as a matter of law in concluding in effect that the issues before it were not governed by Section 3(4). We further submit that the court below erred in failing to recognize that the provisions of this section could not properly be invoked in this litigation.

By this argument we do not contend that there is any lawfulness or impropriety inherent in the establishment and maintenance by rail carriers of proportional rates or of rates in the nature of proportional rates for application on traffic originating or terminating beyond the limits of the rail hauls but not moving via through routes. *Lake Cargo Coal Rates, 1925,* 126 ICC 313-314. Our only point here is that, in the absence of through routes, the lawfulness of such rates may not be determined by consideration of Section 3(4).

In addition to misconstruing the application of Sections 2 and 3 to the rate problem presented by this litigation, the court below erred in concluding that operation of the schedules in controversy would contravene the National Transportation Policy.

The National Transportation Policy Was Effectuated.

In the statement of the National Transportation Policy adopted September 18, 1940 (Title 49 U.S.C.A., preceding Section 1, carrier herein as Appendix 2-a), it is declared to be the policy of Congress:

1. to provide for fair and impartial regulation of all modes of transportation;
2. so administered as to recognize and preserve the inherent advantages of each;
3. to promote safe, adequate, economical and efficient service and foster sound economical conditions in transportation and among the several carriers;
4. to encourage the establishment and maintenance of reasonable charges without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.

The above factors were to be given consideration in order that a result be brought about, and that result was stated in this same section to be:

> "developing, coordinating, and preserving a national transportation system by water, highway and rail * * * adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."

The provisions of the National Transportation Policy, insofar as they pertained to rail-and-water transportation, are in effect substantially the same as the provisions of a prior statement enacted as Section 500 of the Transportation Act, 1920 (U. S. Code Title 49, Sec. 142—

February 28, 1920, c. 91, Sec. 500, 41 Stat. 499). We carry this section as Appendix 2-b.

The first paragraph of this section provided:

> "It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation."

The assailed order of the Commission was entered with full comprehension and consideration of the congressional declaration of national transportation policy, and was entered with due consideration of the rights of the rail carriers and the water carriers, parties to this litigation.

That the order did not conform to the position of the barge lines, and that it might operate to the detriment of the barge lines' competitive position in the transportation of grain to Chicago, does not brand the order as in contravention of the National Transportation Policy, for this Court in construing the prior enactment, Section 500 of the Transportation Act, 1920, in *Mississippi Valley Barge Line Co.* v. *U. S.*, 292 U. S. 282, stated clearly at page 288:

> "The admonition does not mean that carriers by rail shall be required to maintain a rate that is too high for fear that through the change they may cut into the profits of carriers by water. The most that it can mean, unless, conceivably, in circumstances of wanton or malicious injury, is that where carriers by land and water are brought within the range of the regulatory powers of the Commission, as, *e.g.*, in establishing through routes or joint rates, there shall be impartial recognition and promotion of the interests of all."

As heretofore shown, the Interstate Commerce Commission had prior to September 18, 1940 (by portions

of the Panama Canal Act and the Inland Waterways Corporation Act), plenary powers in connection with through rail-and-water routes. As also shown heretofore, the amendments of September 18, 1940, did, in connection with the powers concerning such through routes, but result in rearrangement of the material and its inclusion in sections of the Interstate Commerce Act. There were provisions effective prior to September 18, 1940, under which rail-and-water transportation might be differentiated from all-rail transportation and the rates, rules, regulations and/or practices of these two kinds of transportation distinguished. The Commission had authority (under Sec. 3(e) of the Inland Waterways Corporation Act which was, by the amendment of 1940, transferred into Section 307(d) of the Interstate Commerce Act), to prescribe reasonable differentials between all-rail rates and joint water-rail rates. The Commission had authority (under Sec. 6(13)(c) of the Act prior to the amendments of September 18, 1940) to prescribe proportional rates by rail to or from the port and to determine to just what traffic and upon what terms and conditions such proportional rates shall apply, the definition of such proportional rates being therein stated as:

> "By proportional rates are meant those which differ from the corresponding local rates to or from the port and which apply only to traffic which has been brought to a port or is carried from the port by a common carrier by water."

This power was continued under Section 6(11)(b) of the Act.

In Section 305(c) (Title 49 U.S.C.A., 905(c), carried as Appendix 2-p), it was made unlawful for common carriers by water to cause any undue or unreasonable preference or prejudice, this section further specifically providing:

> "Differences in the classifications, rates, fares, charges, rules, regulations and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation, shall not be deemed to constitute unjust discrimination, prejudice or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provisions of this act."

The Act, therefore, by its own provisions prior to September 18, 1940, clearly conferred powers upon the Commission under which rail-and-water transportation would be differentiated from all-rail transportation. All of these provisions were continued by the amendments with the addition of language adopted at the same time (Sec. 305(c) above), which clearly shows that Congress itself recognized that rates, fares, charges, rules, regulations and practices, might differ as between water and rail transportation.

Among other amendments made in 1940, was an amendment to Section 15(a) of the Act (Title 49 U.S. C.A., Sec. 15a) which changed paragraph 2 from:

> "In the exercise of its power to prescribe just and reasonable rates, the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

so that it reads, as follows:

> "In the exercise of its power to prescribe just and reasonable rates, the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic *by the carrier or carriers for which the rates are prescribed;* to the

need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

This particular amendment to Section 15(a) has been considered by the Interstate Commerce Commission in *Seatrain Lines, Inc.* v. *A. C. & Y. Ry. Co.*, 243 ICC 199. At 214, the Commission states:

> "In connection with these contentions it is of interest that the rule of rate making in section 15a has been recently amended so as to require us, in the exercise of our authority to prescribe just and reasonable rates, to 'give due consideration, among other factors, to the effect of rates upon the movement of traffic *by the carrier or carriers for which the rates are prescribed* * * *.' This admonition is repeated in sections 216(i) and 307(f), containing rules for rate making relating to motor and water carriers, respectively. The words which have been italicized for emphasis are of particular interest. They were not in either of the bills originaliy passed by the Senate and the House of Representatives but were added by the committee of conference. Their meaning, supported also by the legislative history, seems to be that no carrier should be required to maintain rates which would be unreasonable, judged by other standards, for the purpose of protecting the traffic of a competitor."

The motor carriers have been under the jurisdiction of the Commission since 1935. The Commission has recognized that its duty in connection with the relationship between the rail and motor carriers has been "a paramount duty laid upon us to regulate both transportation agencies, not in the interest of the one or the other of such agencies, but in the public interest." See *Naval Stores from Miss. to Gulf Ports*, 235 ICC 723, at 733. In

this *Naval Stores* case, the Commission also states, at page 733:

> "Healthy competition between different agencies of transportation is undoubtedly in the public interest. Ordinarily, either may initiate rates that will, in the opinion of its management, enable it to obtain or retain desired traffic provided that such rates are compensatory."

The National Transportation Policy must be interpreted in a manner which would permit of the Commission making effective the various provisions of the act as it now reads which, as pointed out, does address itself to a situation in which rail transportation might be handled under practices differing from those pertaining to water transportation and in which through water-rail transportation may be properly functioning under practices differing from all-rail transportation.

It should be evident from the information heretofore set forth in the statement of the case, and it will be more fully developed hereinafter, that the continued application of the ex-Northwest proportional rates to Central Territory and of the proportional rates to the East on ex-barge grain seriously disturbed the existing grain rate structure throughout Official Territory, a structure, in large measure at least, prescribed by the Commission. From the statement of the National Transportation Policy itself and from the decisions of this Court and of the Commission construing that congressional declaration of policy, it is obvious that the protection of the competitive position of these water carriers in the transportation of grain to Chicago, is not necessarily paramount from the standpoint of national transportation policy to the protection of an extensive rate adjustment on important traffic. Unquestionably, the Commission recognized this and accorded due con-

sideration to the National Transportation Policy when it entered the assailed order. We submit that the court below, on the contrary, took a narrow view of this policy quite inconsistent with its intent, purpose and construction and that thereby the court below clearly erred.

The Commission Properly Considered the Carriers' Proposals in Relation to the Grain Rate Structure.

The proportional rates east of the gateways to destinations in Central Territory, which we are here considering, were prescribed by the Interstate Commerce Commission in *Southwestern Millers' League* v. *A. T. & S. F. Ry. Co.*, 225 ICC 195. The Commission was there fixing a proper level of proportional rates for those portions of the movements east of Chicago and the other gateways to Official Territory. It was recognized that transportation east of Chicago on grain which originated in the Northwest, and on grain which originated in Trans-Mississippi River Territory was substantially the same. But it was found that the proportional rate levels east of Chicago, and the other gateways, must necessarily vary as between ex-Northwest and ex-Trans-Mississippi River grain, in order to equalize the through charges. The Commission did require equalization of the through charges, requiring further a continuation of the gateway equalization. This arrangement made absolutely necessary the setting up of varying levels of proportional rates east of these gateways for that similar movement from the gateway to any destination in Central Territory.

Necessarily, the Commission was forced to consider the factors connected with the inbound movement not only in order to work out such equalization, but also because it was concerned with proportional rates for but parts of through transportation.

In the Supplemental Report of December 13, 1938, in *Southwestern Millers' League* v. *A. T. & S. F. Ry. Co.*, 231 ICC 130, it developed that, after the Interstate Commerce Commission had prescribed the varying proportional rates east of the gateways with a separate proportional east of Chicago on traffic from the Northwest three cents higher than the proportional on traffic from the Southwest, this higher Northwest proportional would be applied on traffic originating in the Southwest but moving to Chicago via intermediate gateways in the Northwest. The Commission, at page 131, stated:

> "The character of the through traffic from Kansas City and other points in Trans-Mississippi River Territory does not change merely because it passes through and is stopped in transit at Minneapolis or other intermediate transit points in Northwest Territory."

The Commission clarified its findings in the *Southwestern Millers' League case*, so as to make it clear that the ex-Trans-Mississippi River, or lower proportional, would apply east of Chicago on grain originating in Trans-Mississippi River Territory, even when such grain moved to Chicago through Northwest Territory.

The Commission there was considering solely the proper proportional to apply to the traffic east of Chicago and the related gateways, and with this decision we have the following practical operation:

(1) A car of grain may move from Minneapolis to Chicago;

(2) A car of grain may move from Kansas City to Chicago;

(3) A car of grain may move from Kansas City to Minneapolis and thence to Chicago;

Two of these cars of grain actually came into Chicago from Minneapolis;

All three of these cars may later be reshipped to Columbus, Ohio, or any other common point in Central Territory.

The handling from Chicago to that common point would be substantially the same. The three cars could move on the same train, over the same railroad, and be delivered to the same dealer at destination. Yet, the grain in one of the cars from Minneapolis, if that grain originated in the Northwest, would be billed at the Northwest proportional. The grain in the other two cars would move under the ex-Trans-Mississippi River proportional, even though one of the cars came directly from Kansas City, whereas the other car reached Chicago via a Northwest gateway.

It can readily be seen that the Commission has properly considered many factors pertaining to the handling of the traffic, which factors are not limited solely to the transportation accorded under the proportional rate factor. When we consider rates in the nature of proportional rates, it is clear that they could not be properly fixed unless such circumstances and conditions are considered, because on that leg of the transportation covered by the proportional rate, in the absence of such consideration, there would be nothing to distinguish the traffic from local traffic, and all rates would be the same. There could be no proportional factors.

The rates east of the gateways to destinations in Trunk Line and New England Territories have for years been arranged, and are now adjusted, so that grain from the Northwest may move through either Chicago or Peoria for the same charge, and grain from Trans-Mississippi may move through either Chicago, Peoria or St. Louis for the same charge (see Exhibit 7, R. E. 38, introduced R. 220, explained R. 218). This requires a varying level of proportional rates east of Peoria, even

though the amounts of the charge to these destinations are the same east of Chicago. This is shown by Exhibit 7, pages 2 and 3, *supra*. It will be noted from the bottom line of page 3 that the domestic rate from Peoria to New York on grain from Minneapolis is 26 cents, whereas it is 28 cents from Peoria to New York on grain from Kansas City.

It will be noted further that this gateway equalization requires proportional rates east of Peoria to Trunk Line and New England Territories which are greater on grain from Trans-Mississippi River Territory than on grain from the Northwest; whereas, just the reverse is true east of Peoria to destinations in Central Territory. To this latter territory, the proportional rates east of Peoria are lower on grain from Trans-Mississippi River Territory than they are on grain from the Northwest. Compare page 1 with pages 2 and 3 of Exhibit 7, *supra*. The same picture is shown on page 2, Exhibit 68 (R. E. 104, introduced R. 1394).

Because the measure of the inbound rate to Chicago had no effect upon the Chicago price, the Court concluded that the measure of this inbound rate should also have no bearing upon the level of the proportional rates east of Chicago (findings Nos. 27, 24 and 26). If the movement into Chicago is as separate and distinct as the Court would have it, and if transportation factors connected with that inbound movement may not be considered in fixing the level of the outbound proportional rate, just where is that equity and where does it arise, which the Court itself would then use in according to the ex-barge grain the use of the proportional rates lower than the local rates east of Chicago?

In its regulation of rates, the Commission is not controlled by the purchase price of a commodity. It must

consider all of the transportation factors. *Boren-Stewart* v. *A. T. & S. F. Ry. Co.*, 196 ICC 120, 125, and *U. S.* v. *Illinois Central R. R. Co.*, 263 U. S. 515, 524.

A grain rate structure is fixed for the proper complete rating of the grain from each of the origin areas to destination. In order that that rate structure might be kept intact and continue to be proper for that grain of each origin area, it is often found necessary that the grain which may arrive at a common gateway be treated differently beyond that gateway.

In *Board of Trade of Kansas City* v. *U. S.*, 314 U. S. 534, this Court recently considered problems connected with the grain rate structure which are very pertinent to our present case and point, and approved the action of the Commission in limiting the application of proportional rates on grain in a manner deemed necessary by the Commission for preservation of that rate structure. We respectfully refer the Court to that portion of the decision beginning on the bottom of page 537. Under rates prescribed by the Commission, grain could move from Kansas City to Chicago via routes through Omaha. If the grain moved direct, or if it was transited at any point between Kansas City and Omaha, the charge for the entire movement was 16 cents, but if the grain was transited at Omaha, the charge for the total movement was 22.5 cents. The difference in the charges depended solely on where the stop may have been made, but in either instance the route and the transportation service would be substantially the same.

The service east of Chicago, which the Court in the instant case noted was identical on ex-barge, ex-rail and ex-lake grain, unloaded into the elevators at Chicago, would also be the same on grain, unloaded in elevators in Chicago, which may have been trucked to Chicago from origins along the Illinois Waterways or which may

have arrived from the Northwest or from Trans-Mississippi origin territory or which may have come in from Illinois origins via rail. Consideration of the transportation factors pertaining to the grain from the various areas makes it clear that the inbound service must be considered by the Commission in determining the lawfulness of rates applied, or proposed to be applied, for the movements from Chicago. This theory and basis of rate-making antedates even the enactment of the Interstate Commerce Act. In *A. T. & S. F. Ry. Co.* v. *U. S.*, 279 U. S. 768, the Supreme Court at 778 states:

> "The practice by which grain shipped to a primary market is given, when shipped out, the benefit of the low rate which would normally have applied if the grain had actually been shipped from the country point through to its ultimate destination, antedates the enactment of the Interstate Commerce Act. *Transit Case*, 24 ICC 340, 348."

Under this theory, the varying proportional rates beyond the primary market or rate-break point, must be fixed in relation to, and after a consideration of, the inbound movement, for in no other way would it be possible to make the total through charge equal to anything, either the through rate from the country point or the through charges from some other area.

In the above case, this Court had occasion to consider proportional rates in varying amounts beyond any one gateway. At page 773, the Court quoted with approval from a decision of the Commission in *Southern Kansas Grain Association* v. *C. R. I. & P. Ry. Co.*, 139 ICC 641, at page 653, as follows:

> " 'The method of publication may be briefly explained by the statement that proportional rates are provided from Kansas City in varying amounts depending upon the point of origin of the grain, which, when added to the local rates into Kansas City, are equal to the specific rates published by the

lines which originate the grain. If these varying proportionals or balances were not maintained the lines which serve Kansas City, but not the grain fields, would be compelled to apply the flat proportional rate of 30.5 cents from that market to the Gulf ports. That flat proportional exceeds the balances maintained by other lines and therefore would attract little, if any, traffic. By providing these varying proportionals the lines serving Kansas City have placed themselves on a competitive basis for the outbound movement of grain stored at that point.' "

The Division in the first decision approved as reasonable the application of the Official Territory rate level on Official Territory transportation (246 ICC 353, 366) (R. 19). In the decision of the entire Commission (R. 47, 248 ICC 307, 309-310), it is stated:

"The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5% of first class) which has been prescribed or approved as a reasonable maximum basis in Official Territory. To Central Territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates."

The District Court has failed to see the difficulties from a rate standpoint which developed when the barge grain moving up the Illinois Waterways to Chicago secured the benefit of the proportional rate level east thereof.

As stated by the entire Commission (248 ICC 307, 309), it was found by the Division that:

"The maintenance of barge-rail combination rates so much lower than the all-rail rates, particularly where the inbound water haul is so short, results in a break-down of the all-rail grain rate structure from adjacent origins in Illinois and Indiana."

After considering the various issues in the case, the entire Commission concluded, at page 311:

> "The facts of record as detailed by the Division and summarized herein, clearly show that respondents are justified under Section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under Sections 2 and 3 of the Act."

The Commission in reaching its conclusions had before it and properly considered the effect upon the entire grain rate structure, not only of the ex-barge grain as it is presently rated, but also of the restricted application proposed by the rail carriers.

In spite of this being clearly shown of record, the District Court found as a fact (see No. 23, which reads):

> "The breakdown of the rail rate structure referred to by the Commission related to the publication by western lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago."

The findings of the Commission to which we have heretofore referred, are crystal clear to the effect that the grain rate structure with which the Commission was concerned was the whole structure.

An important part of the whole is the local level within Official Territory, and had the Commission not been concerned with that, there would have been no occasion for the Commission having considered so carefully the proper level of the rates for Official Territory.

In the decision of the Division (246 ICC 353, 366), the reasonableness of the local rate level east of Chicago was considered, and it was stated that these local rates ranged from 17.3 to 25.7 per cent of first class, and were

substantially under the level of the sixth-class rates (27.5 per cent of first class), which the Commission had found in the cases cited in the footnote to be maximum reasonable rates on grain and grain products within Official Territory.

The court found that cases to which the Commission referred treated solely with the local rate level and did not involve consideration of proper proportional rate levels.

In the first place, several of these decisions did treat with proportional rail-rate levels. See *Valley Grain Co., Inc.* v. *C. C. C. & St. L. Ry. Co.*, 159 ICC 223; 167 ICC 190; and *Allen & Wheeler Co.* v. *A. C. & Y. Ry. Co.*, 225 ICC 179.

In the second place, these cases show that, in considering what is termed the local rate level, the Commission was considering rates on grain from origins in Illinois to the East, showing that Illinois is in Official Territory. See *Indianapolis Board of Trade* v. *B. & O. R. R. Co. et al.*, 129 ICC 675.

In the third place, it is this local rate level within Official Territory with which the Commission was concerned.

In addition to the protection of the Official Territory rate level, we must also consider the effect of the present application upon the gateway and territorial equalization. We have heretofore shown that east of Peoria there are varying proportional rates both to Central Territory and to the East. That rate setup east of Peoria, because of these equalizations, results in proportionals to Trunk Line and New England Territories higher in amount on grain from Trans-Mississippi origin area than on grain from the Northwest; whereas, to destinations in Central Territory the proportionals east of Peoria are lower on grain from Trans-Mississippi

River origin area than they are on grain from the Northwest. If *any* difference is discriminatory, and if in judging the propriety of proportionals east of the gateway we cannot consider transportation factors connected with the inbound movement to the gateway, this whole structure of gateway equalization, and equalization of territories such as required in *Southwestern Millers' League* v. *A. T. & S. F. Ry. Co.*, 225 ICC 195, would fall.

That the continued application of the proportional rates from Chicago on ex-barge grain was disturbing the Official Territory rate level was clearly and definitely shown by substantial evidence which the Commission properly considered. (This evidence has been summarized in the statement of the case, pages 10 to 17, inclusive, herein, where record references are given.) It showed that the through charges on Illinois grain moving by barge to Chicago and thence east by rail were lower than the through charges on grain moving all-rail from the same origins to the same destinations by amounts materially in excess of the spreads between the barge charges to Chicago and the corresponding rail rates to Chicago. In other words, through the medium of the application of proportional rates east from Chicago, shippers using barge transportation to Chicago were enjoying savings in through transportation charges in excess of the savings possibly incident to the use of the barges. Obviously, such use of the proportional rates not merely disturbed but, in fact, defeated the Official Territory local level of rates. Furthermore, the use of the proportional rates on ex-barge traffic provided through charges on grain from Illinois lower than the charges on grain from intermediate origins in Indiana and Michigan. The rail haul from Chicago on the ex-barge grain was greater than the rail haul from the intermediate origins, and many of the routes operated directly through such intermediate origins. Clearly,

the existing Official Territory level of rates from those intermediate origins could not be maintained indefinitely under such conditions.

Admittedly, competition of the barge lines operating on the Illinois Waterways had forced reductions in the rates on grain from origins adjacent to this waterway to Chicago. But by no means was this the sole effect of the barge competition, as the court below mistakenly concluded. The application of the proportional rates on the ex-barge traffic in reality caused a disturbance of the rate structure throughout the entire territory in which these proportional rates were applied.

The Interstate Commerce Commission does have the power to protect a reasonable rate adjustment. See *U. S.* v. *Ill. Central R. Co.*, 263 U. S. 515, 525; *Youngstown Sheet and Tube Co. et al.* v. *U. S. et al.*, 295 U. S. 476, 479 and 480; *Scandrett* v. *U. S.*, 32 Fed. Supp. 995, affirmed 312 U. S. 661. To accomplish this purpose it might close a route. *Western Chem. Co.* v. *U. S.*, 271 U. S. 268, 272.

In *Inland Waterways Corp.* v. *A. & R. R. Co.*, 183 ICC 761, the barge line alleged that the restrictions limiting the use of proportional rates so that they applied only on traffic moving all-rail were unduly prejudicial to complainant. There were no through rail-barge rates from the territory involved. In most instances the through charges all-rail were lower than the sums of the rail local rate to the port, plus the barge charge beyond. The barge line was particularly desirous of using these proportional rates on grain. The Commission showed that the proportional rates on the grain and the grain products were devised primarily for the purpose of equalizing the various routes through the gateways with western territory. The Commission gave examples of this equalization (page 764). The Commission stated that the barge line

port-to-port rates were not related to the all-rail rates so that if the proportional rates were applied in connection with the port-to-port rates of the barge, the equalization of the through charges through the respective gateways would be broken down. At page 765, the Commission states:

> "If the proportional rates are made to apply in connection with the barge line, it will be in position through its largely unrestricted control of port-to-port rates to bring about the establishment of through combination rates which will cause similar disadvantage to the all-rail routes and to shippers such as the intervener."

The Commission said (765) that any undue prejudice which existed could and should be removed by the establishment of through routes and joint rates in compliance with the decision in *Through Routes and Joint Rates between Inland Waterways Corporation and Other Common Carriers*, 153 ICC 129. The barge-line traffic was not accorded the use of the proportional rail basis.

The port-to-port rates of the barge lines are still largely beyond the control of the Interstate Commerce Commission. Section 303(b) of the Interstate Commerce Act (Title 49, U.S.C.A., Sec. 903(b) provides:

> "Nothing in this part shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities."

The Commission was not, and properly could not be, unmindful of the entire grain rate structure to and within Official Territory, a structure which has been the subject of much litigation before that body and a structure which in large measure has been prescribed by it. In recognizing that the lawfulness of proportional rates must be determined by consideration of all of the cir-

cumstances and conditions surrounding the through transportation, and in considering the effect upon the entire grain rate structure of the carriers' proposal, the Commission did not act arbitrarily or in excess of its power and did not misconstrue or misapply the governing provisions of the Act. We respectfully submit that the court below clearly erred in failing to recognize the extent of the circumstances and conditions which necessarily the Commission was required to consider in determining the lawfulness of the schedules in controversy.

The Court Erred in Holding That There Was No Evidence in the Record to Support the Commission's Finding That the Proposed Schedules Would Not Prohibit the Movement of Grain by Barge-Rail Even to Trunk Line Territory.

In finding of fact No. 18, the court stated, in part:

> "There is no evidence in the record to support the finding of the Commission that the proposed schedules will not prohibit the movement by barge-rail, even to Trunk Line Territory. * * *"

The court thereafter outlined some of the circumstances, about which there was evidence in the record, concerning the marketing of grain at Chicago, and found that ex-barge, ex-rail, and ex-lake grain was purchased and sold on the Chicago market at any given time at the same price, that ex-barge, ex-lake and ex-rail grain was sold at eastern destinations at prices named on a basis delivered at such destinations, and that such prices were predicated directly on the freight rate from Chicago to the destinations.

From these facts the Court concluded that since the tariffs in controversy would prohibit the application of proportional rates on ex-barge grain, thus requiring the application of the higher local rates from Chicago, ex-barge grain could not move by rail from Chicago because

the delivered price at destination would exceed the delivered price on ex-lake grain entitled to use the proportional rates, by the extent of the spreads between the proportional rates and the local rates.

A review of the record discloses that there was evidence therein supporting the Commission's contrary finding that operation of the suspended schedules would not necessarily prohibit the movement of ex-barge grain eastbound from Chicago by rail.

A witness testified (R. 267-269) that the matter of supply and demand would determine whether ex-barge grain would move from Chicago to Trunk Line Territory under the local rates that would be applied thereon if the application of the proportional rates was restricted as proposed; and in so testifying, this witness pointed to the fact that a large part of the grain moving via rail east of Chicago does so for transit intermediate to the seaboard, a privilege which is not accorded grain moving east of Chicago via lake.

The Commission's finding was predicated further upon definite evidence of record showing that the through charges on grain moving from Illinois origins via barge to Chicago, and thence via rail to destinations in Central Territory under the local rates from Chicago that would be applied if the suspended schedules were made operative, still would be lower than the through charges for the movement of such grain all-rail from the same Illinois origins to the same destinations in Central Territory either over direct routes or over routes through Chicago. Exhibit No. 69, R. E. 107, introduced R. 1394, shows that from Morris, Illinois, a representative origin of barge grain, via Chicago to Indianapolis, Indiana, Detroit, Michigan, and Circleville, Ohio, representative destinations in Central Territory, the through charges via the barge-rail routes under the adjustment

that would result from operation of the suspended schedules, would be lower than the all-rail rates from Morris to the same destinations.

While the evidence before the Commission may not have established beyond all question of doubt that operation of the suspended schedules would not prohibit the movement of ex-barge grain by rail east from Chicago, the testimony established that as a reasonable presumption. The Commission concluded that the weight of the evidence favored this presumption. Appellants respectfully submit, therefore, that the court below erred in finding that the Commission's conclusion was unsupported by any evidence and the court below erred further in substituting its judgment for the judgment of the Commission upon the weight of the evidence in finding affirmatively that operation of the suspended schedules would prohibit such movements.

The Railroads Are Not Proper Defendants.

The complaints joined six of the rail lines operating east of Chicago, which were parties to the schedules in controversy, and prayed (Cargill complaint, R. 133, at 146) that these railroads be enjoined from making effective and enforcing the changes in their tariffs and schedules of rates approved as lawful by the Commission in the order assailed herein, and (Inland Waterways complaint, R. 14) from making effective said changes in tariffs unless and until approved as lawful by a lawful order of the Commission.

In the statutes establishing the procedure for an action to set aside an order of the Interstate Commerce Commission (Urgent Deficiencies Act of October 22, 1913, 38 Stat. 220, Title 28 U.S.C.A., Secs. 46, 47, Appendix 2-s and 2-t herein), there is no provision for an action against any one or more of the rail carriers who are subject to supervision and control by the Interstate

Commerce Commission. Section 46 of the Act provides that suits to enjoin any order of the Commission shall be brought in the District Court against the United States.

The character of the relief against the individual rail lines for which these complaints prayed, even if any rights to such relief existed, which we deny, is not within the jurisdiction of the specially constituted three-judge court which entered the decree herein, or within the special procedure provided by Congress for review of orders of the Interstate Commerce Commission. See *Powell* v. *U. S.*, 300 U. S. 276; *U. S.* v. *Idaho*, 298 U. S. 105, 109, 110; *P. & W. Va. Ry. Co.* v. *U. S.*, 281 U. S. 479, 488; *Manhattan Transit Co.* v. *U. S.*, 24 Fed. Supp. 174, 177. Any injunctive relief against these railroad defendants, in cases where appropriate, is provided by the normal procedure within the jurisdiction of the District Court of the United States. In such procedure, the cause would be heard initially by a single judge, the action of the District Court would be appealable only to a Circuit Court of Appeals, and the subsequent appeal therefrom to this Court would be by writ of certiorari.

Where the carriers are controlled by the order of the Commission, it would seem to be completely unnecessary in considering the action of the master to also treat directly with the subject. That such a matter was considered ill-advised, is made clear when we consider arrangements made by the Urgency Deficiencies Act as to the nature of the proceeding and the specification of parties.

Another important point is the fact that the Interstate Commerce Act in Section 15-7 (Title 49, U. S. Code, Sec. 15, Par. 7) provides that whenever there is filed with the Commission a schedule setting up a new rate or practice, the Commission may suspend such new tariff provision, but not for a longer period than seven months beyond the time when it would otherwise go into effect.

At the end of this time the proposed rate or regulation was to go into effect, even though the Commission had not determined its proceedings in connection therewith. This was to preserve at least the color of that definite right which has always been accorded to the carriers of filing whatever tariffs they may deem advisable.* This protects the initiative of the carriers. The provisions of the Interstate Commerce Act outline exclusively the methods under which the proposed rate schedules may be attacked. See *Director General* v. *The Viscose Co.*, 254 U. S. 498.

If a dissatisfied shipper could bring a proceeding in court to secure an injunction against individual railroads, after the expiration of the seven months' period of suspension as provided by Section 15(7) of the Interstate Commerce Act, there would be no effective time limit to the suspension of operation of schedules initiated by railroads.

Complainants, as authority for their position that the court below had jurisdiction over the railroads named defendants, cited in their brief in the court below, *Chicago Junction case,* 264 U. S. 258. In that case, brought to set aside an order of the Commission, affirmative relief against individual railroads was prayed. The relief requested, which was for an order requiring the cancellation of a lease and a sale of stock necessary for restoration and maintenance of the *status quo* during the progress of the litigation, was obtained, but for the reason that only by such relief could irreparable damage be prevented. In the instant case, complainants have an adequate remedy if the carriers establish and enforce schedules of rates which are unlawful; hence, the complainants here do not require the protection evidenced in the cited case.

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* *U. S.* v. *Illinois Central R. R.*, 263 U. S. 515, 522; *I. C. C.* v. *C. G. W. Ry. Co.*, 209 U. S. 108, 118, 119.

The Inland Waterways Corporation and A. L. Mechling, Intervener, Do Not Have the Right to Maintain an Action to Enjoin the Order of the Interstate Commerce Commission.

This action was brought by the barge lines, who admittedly conduct their transportation of grain via the Illinois Waterways to Chicago on a port-to-port basis without any common arrangement with carriers beyond Chicago for through transportation, to protect their competitive position in connection with the transportation of grain to Chicago. The barge lines claim that the protection of their competitive position and certain provisions of the Interstate Commerce Act, as amended September 18, 1940, particularly the provisions of the National Transportation Policy and Section 3(4) thereof, afford the rights necessary for maintenance of an action of this character.

The cases are uniform in holding that a suit to vacate an order of the Interstate Commerce Commission may be brought only by a party possessing a right of his own which has been violated by the order. The fact that the order might work to the detriment of the economic position of plaintiff, or might make its competitive relationship less secure, does not furnish the basis for an action to vacate the Commission's order. *Alexander Sprunt & Son, Inc., et al.* v. *U. S.* 281 U. S. 249; *Merchant Truckmen's Bureau of New York* v. *U. S., et al.*, 16 Fed. Supp. 998, 999; *Pennsylvania R. Co.* v. *U. S., et al.*, 40 Fed. 2d 921, 924; *United States, et al.* v. *Ill. Central R. Co.*, 291 U. S. 457, 465; *Pittsburgh & W. Va. Ry. Co.* v. *U. S., et al.*, 281 U. S. 479; *Moffat Tunnel League, et al.* v. *U. S., et al.*, 289 U. S. 113; *Mississippi Valley Barge Line Co.* v. *U. S., et al.*, 292 U. S. 282, 289; *L. Singer & Sons, et al.* v. *Union Pacific R. Co.*, 311 U. S. 295, 303; *Fairchild* v. *Hughes*, 258 U. S. 126, 129; *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125; *Ex Parte*

Albert Levitt, 302 U. S. 633, 634; *Youngstown Sheet & Tube Co.* v. *U. S.*, 7 Fed. Supp. 33 (see particularly at page 36), affirmed 295 U. S. 476.

Clearly then the mere desire of the barge lines to protect their competitive position does not furnish a right upon which they may properly base this action.

In another section of this brief, we have discussed at length the declaration of the National Transportation Policy, the amendment of Section 3(4), and the various other changes in the Interstate Commerce Act effected September 18, 1940. The Court's attention is respectfully directed to that section herein (pages 48 to 65, inclusive), where it is made clear that no provision of that Act affords these plaintiffs the right to maintain this action, but that certain provisions of that Act do afford them rights to maintain initially before the Commission, actions of a different character to effectuate their purposes, rights which they have not attempted to exercise insofar as their grain traffic is concerned.

The authorities cited by the barge lines in their briefs in the court below do not sustain their contention, for those cases concern definite rights quite distinct from any of the grounds upon which the barge lines here must rest. One nature of case so cited, *Chicago I. & L. Ry. Co.* v. *U. S.*, 270 U. S. 287, rests on the right of connecting lines in a through route to reasonable, proper, and equal facilities for the interchange of traffic. The through route and joint rates had been established in response to an order of the Commission in *Chicago Lakeshore & South Bend Ry. Co.* v. *Director General*, 58 ICC 647. The Supreme Court was considering an order of the Commission made in a later proceeding, *Chicago Lakeshore & South Bend Ry. Co.* v. *L. E. & W. Ry. Co.*, 88 ICC 525, which was an order implementing the through route. Another nature of case cited by appellees, such as *Claiborne-Annapolis Ferry Co.* v.

U. S., 285 U. S. 382, and *Alton R. R. Co.* v. *U. S.*, 315 U. S. 15, rest upon a right given by statute which right was considered in *T. & P. Ry. Co.* v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266, see 273, and *Western Pacific California R. R. Co.* v. *Southern Pacific Co.*, 284 U. S. 47, see page 51.

CONCLUSION.

The order of the Interstate Commerce Commission meets the test to which it should have been subjected. The order is within the jurisdiction of the Commission, was made after full hearing, was based on essential findings supported by evidence and free from any error in the application of law.

The error of the court below was twofold, in that the court not only failed to subject the order to the proper test, but went beyond the proper limits of court review and erroneously substituted its judgment for that of the Commission.

It is respectfully submitted that the decree of the District Court should be reversed and the cause remanded with directions to dismiss the bills of complaint.

LEO P. DAY,
Solicitor for The New York Central Railroad Company.

WILLIS T. PIERSON,
Solicitor for Erie Railroad Company.

EDWARD A. KAIER,
Solicitor for The Pennsylvania Railroad Company.

HORACE L. WALKER,
LAWRENCE CHAFFEE,
Solicitors for The Chesapeake and Ohio Railway Company, and The New York, Chicago and St. Louis Railroad Company.

FRANK H. COLE, JR.,
Solicitor for The Baltimore and Ohio Railroad Company.

APPENDIX 1.

(a)

The note, as now effective, governing application of the proportional rates east of Chicago to destinations in Trunk Line and New England Territories:

Note 20--Application of re-shipping or proportional rates from Chicago, Joliet, Kankakee, Milwaukee, Manitowoc, etc.

Where reference is made to this note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the re-shipping rate therefrom.

Effective January 15, 1924. Agent B. T. Jones' Tariff I.C.C. 1373 Supplement 11.

These rates are applicable on Ex-lake shipments as of the date such shipments leave the lake port.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Milwaukee or Manitowoc via lake, also on Grain Products milled from Grain

which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at reshipping points subject to this application.

(b)

The proposed note to govern the use of the proportional rates east of Chicago to Trunk Line and New England Territories

"NOTE 20

"APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

"Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

"(a) Traffic reaching the re-shipping point via a rail transportation line that can furnish to the out-bound carrier freight-bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping

point to be added to the re-shipping rate therefrom. (See Exception below.)

"(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz.: Rivers, Canals and connecting waterways, except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I.C.C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

"These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

"Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

"EXCEPTION.—The foregoing provision as to application of the local rates as minima will *not* apply on shipments of Malt and Malt Sprouts, C.L., originating at Jefferson Junction, Wis. EXPIRATION DATE ELIMINATED.)

(c)

The presently effective note governing the application of the proportional rates east of Chicago to destinations in Central Territory.

"NOTE 40

APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

"Where reference is made to this note rates will apply as follows:

"Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in NORTHWEST TERRITORY (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

"These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

"Rates also apply on through billed shipments originating at points in territory as described in this Note not stopped in transit at reshipping points subject to this application.

"GRAIN (NORTHWEST)

"Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 73), originating in the following described territory:

"(a) Points in Wisconsin.

"(b) Points in Upper Peninsula of Michigan.

"(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78.

"(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

"(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis."

(d)

The proposed note governing the application of the proportional rates east of Chicago to destinations in Central Territory.

"NOTE 40

"APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

"Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

'Description of Northwest Territory:

"Points in Wisconsin.

"Points in Upper Peninsula of Michigan.

"Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River territory as described in Note 20, pages 77 and 78 of tariff as amended.

"Points in Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

"(b) On Ex-Lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will

not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

"These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

"Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application."

APPENDIX 2.

Statutes Cited.

a. The National Transportation Policy

(Act September 18, 1940, c. 722, Title 1, Section 1, 54 Stat. 899, Title 49 U.S.C.A., preceding Section 1.)

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

b. Section 500 of the Transportation Act of 1920

(U. S. Code Title 49, Sec. 142—February 28, 1920, c. 91, Sec. 500, 41 Stat. 499.)

"It is declared to be the policy of Congress to promote, encourage, and develop water transpor-

tation, service and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

"It shall be the duty of the Secretary of War, with the object of promoting, encouraging and developing inland waterway transportation facilities in connection with the commerce of the United States, to investigate the appropriate types of boats suitable for different classes of such waterways; to investigate the subject of water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, and also railroad spurs and switches connecting with such terminals, with a view to devising the types most appropriate for different locations, and for the more expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities, cities, and towns regarding the appropriate location of such terminals, and to cooperate with them in the preparation of plans for suitable terminal facilities; to investigate the existing status of water transportation upon the different inland waterways of the country, with a view to determining whether such waterways are being utilized to the extent of their capacity, and to what extent they are meeting the demands of traffic, and whether the water carriers utilizing such waterways are interchanging traffic with the railroads; and to investigate any other matter that may tend to promote and encourage inland water transportation. It shall also be the province and duty of the Secretary of War to compile, publish, and distribute, from time to time, such useful statistics, data, and information concerning transportation on inland waterways as he may deem to be of value to the commercial interests of the country.

"The words 'inland waterway' as used in this section shall be construed to include the Great Lakes."

The Interstate Commerce Act.

c. Section 1(4) (Title 49, U.S.C.A., Section 1(4) as it read prior to the amendments of September 18, 1940.

"Section 1, par (4). It shall be the duty of every common carrier subject to this chapter engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this chapter participating therein which shall not unduly prefer or prejudice any of such participating carriers."

d. Section 1(4) as amended September 18, 1940:

"(4) It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this title, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish

just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

e. "Sec. 2 (Title 49 U.S.C.A., Sec. 2.) If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

f. Section 3(1) (Title 49, U. S. Code, Sec. 3(1)), prior to the amendments of September 18, 1940, read as follows:

"(1) It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

By the amendments of September 18, 1940, this paragraph was changed to read as follows:

"(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable prefer-

ence or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: Provided, however, that this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

g. Section 3(3) (Title 49, U. S. Code, Section 3(3), prior to September 18, 1940, read as follows:

"All carriers, engaged in the transportation of passengers or property, subject to the provisions of this part, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

By the amendments of September 18, 1940, this paragraph was changed to Section 3(4) and its language to read as follows:

"(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall

not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part of any common carrier by water subject to Part III."

h. Section 6(13) (Title 49 U.S.C.A., Section 6(13)) as it read prior to September 18, 1940.

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier; Provided, That construction required by the Commission under the provisions of this paragraph shall be sub-

ject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this part.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

(c) To establish proportional rates, or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

(d) If any rail carrier subject to the Act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country."

i. Section 6(11) as amended September 18, 1940. (c. 722, Title I, Section 8, 54 Stat. 910, formerly paragraph 13, redesignated 11 in these amendments of September 18, 1940).

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or car-

riers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passenger or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right-of-way, or by directing either or both the rail and water carrier, individually or in connection with one another to construct and connect with the lines of the rail carrier a track or tracks to the dock. The commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: Provided, That construction required by the commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this chapter.

(b) To establish proportional rates or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

j. Section 15(3) (Title 49, U.S.C.A., Section 15(3)), prior to amendments of September 18, 1940).

"Sec. 15, par. (3). The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; nor shall the commission have the right to establish any route, classification, or practice, or any rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this chapter shall be subject to the laws and regulations applicable to transportation by water."

k. Section 15(3) as amended September 18, 1940. (c. 722, Title I, Section 10 (a-d), 54 Stat. 911, 912; Title 49, U.S.C.A. Section 15(3).)

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates,

fares, or charges, applicable to the transportation of passengers or property by carriers subject to this chapter, or by carriers by railroad subject to this chapter and common carriers by water subject to chapter 12 of this title, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section."

1. Section 15(6) (Title 49, U.S.C.A. Section 15(6).)

"Sec. 15, par. (6). Whenever, after full hearing upon complaint or upon its own initiative, the commission is of opinion that the division of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the commission and the divisions thereof are found by it to have been unjust, unreasonable,

or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

m. Section 15(7), (Title 49, U.S.C.A. 15(7)), as amended:

"(7) Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the car-

rier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

n. Section 303(b) (Title 49, U.S.C.A., Section 903 (b).)

"(b) Nothing in this chapter shall apply to the transportation by a water carrier of commodities in

bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. This subsection shall not apply to transportation subject, at the time this chapter takes effect, to the provisions of sections 843-848 of Title 46, as amended."

o. Section 305(b) (Title 49, U.S.C.A., Section 905 (b)).

"(b) It shall be the duty of common carriers by water to establish reasonable through routes with other such carriers and with common carriers by railroad, for the transportation of persons or property, and just and reasonable rates, fares, charges, and classifications applicable thereto, and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to their operation and providing for reasonable compensation to those entitled thereto. Common carriers by water may establish reasonable through routes and rates, fares, charges and classifications applicable thereto with common carriers by motor vehicle. In the case of joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such carriers."

p. Section 305(c) (Title 49 U.S.C.A., Section 905(c).)

"(c) It shall be unlawful for any common carrier by water to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, port district, gateway, transit

point, locality, region, district, territory, or description of traffic in any respect whatsoever; or to subject any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect, whatsoever: PROVIDED, That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description. Differences in the classifications, rates, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provision of this chapter and chapters 1 and 8 of this title."

q. Section 307(d) (Title 49, U.S.C.A., Section 907(d).)

"(d) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and carriers by railroad, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger rail-

ways not engaged in the general business of transporting freight in addition to their passenger and express business, and common carriers by water. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of section 15 of this title."

q-1. Section 307(e) (Title 49, U.S.C.A., Section 907(e)).

"(e) Whenever, after hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and common carriers by railroad or by motor vehicle, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto, the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers. In cases where the joint rate, fare, or charge, was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their

property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge."

q-2. Section 309(a) (Title 49 U.S.C.A., Section 909(a)).

"(a) Except as otherwise provided in this section and section 911, no common carrier by water shall engage in transporting subject to this chapter unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* That, subject to section 910, if any such carrier or a predecessor in interest was in a bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing reasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. If the application for such certificate is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (c), and such certificate shall be issued

or denied accordingly. Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a common carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate, and, if application for such certificate is made to the Commission within such period, the continuance of such operation shall be lawful pending determination of such application."

Inland Waterways Corporation Act.

r. Sec. 3 (e) of the Inland Waterways Corporation Act as it read just prior to September 18, 1940 (Title 49, U.S.C.A. Sec. 153; as amended in 45 Stat. 978, 48 Stat. 968, 49 Stat. 958, 53 Stat. 1434).

"Sec. 3 (e) Any person, firm, or corporation, including the Inland Waterways Corporation, engaged or about to engage in conducting a common-carrier service upon the Warrior, Mississippi, Columbia, Snake, Sacramento, San Joaquin, or Savannah Rivers, or any tributaries thereof, may apply to the Interstate Commerce Commission and obtain a certificate of public convenience and necessity in accordance with the provisions of section 1 of the Interstate Commerce Act, as amended, and the Interstate Commerce Commission shall thereupon, by order, direct all connecting common carriers and their connections to join with such water carrier in through routes and joint rates with reasonable rules, regulations, and practices, as provided in paragraph (3) of section 15 of the Interstate Commerce Act, as amended, and the Commission shall, in such order, fix reasonable minimum differentials between all rail rates and joint rates in connection with said water service to apply until changed by order of the Commission. Such joint routes, rates, rules, regulations, and practices may be changed by order of the Commission or by agreement of the water carriers and the other participating carriers. The Commission shall further require

the interested common carriers to enter into negotiations for the purpose of establishing equitable divisions of the aforesaid joint differential rates within thirty days after such joint rates are established, and if the carriers are unable to agree upon equitable divisions within one hundred and twenty days from date of publication the Commission shall, by order, determine and establish reasonable divisions to become effective coincident with the effective date of the joint rates. The Commission is hereby given authority upon complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning (1) the reasonableness or lawfulness of any through route or joint rate filed pursuant to such order of the Commission, or (2) the reasonableness of any minimum differentials between all rail rates and joint rates in connection with any water service; or (3) the reasonableness of any division of joint rates ordered by the Commission under the provisions of this Act; and after full hearings the Commission may make such order with reference to any such matters as it may find to be proper and in the public interest. At any such hearing the burden of proof concerning the unreasonableness or unlawfulness of any through route, joint rate, minimum differentials between all rail rate and joint rate in connection with water service, or division of joint rates shall be upon the carrier or carriers making the complaint; and the Commission shall give the hearing and decision of such questions preference over all other questions pending before it, except such questions as are given like preference by law, and decide the same as speedily as possible: Provided, That if the Inland Waterways Corporation sells or leases its transportation facilities to any person, firm, or corporation to be operated as a common carrier, such person, firm, or corporation shall be entitled to a certificate of public convenience and necessity upon making application therefor; and all through traffic arrangements and joint tariffs with rules, regula-

tions, and practices in connection therewith published by the Inland Waterways Corporation and filed with the Interstate Commerce Commission and participated in by other carriers shall remain in full force and effect between such carriers and the person, firm, or corporation purchasing or leasing such transportation facilities from the Inland Waterways Corporation and operating of the same as common carriers until changed by order of the Commission, except that such through-traffic arrangements and joint tariffs, with rules, regulations, and practices therewith, may be changed by mutual consent of the water carrier and the other participating carriers. Joint rail and water rates as herein used shall be deemed to include every movement of traffic in which a water line can participate.

Judicial Code.

s. Title 28, U.S.C.A., Section 46.

"Sec. 46. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit."

t. Title 28, U.S.C.A., Section 47.

"Sec. 47. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless

a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit. PROVIDED, THAT, In cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply."

APPENDIX 3.

Assignment of Errors.

1. The Court erred in holding that the order of the Interstate Commerce Commission discriminates against water competition by users of barges.

2. The Court erred in assuming to itself the power to determine whether there was or was not discrimination.

3. The Court erred in concluding that the carrier defendants were properly joined in these suits for hearing by the specially constituted three-judge Court, and that said Court has jurisdiction to enjoin said carrier defendants.

4. The Court erred in concluding that plaintiff Inland Waterways Corporation and intervening plaintiff A. L. Mechling, doing business as A. L. Mechling Barge Line, have an interest and standing which entitle them to bring and maintain their suit.

6. The Court erred in concluding that an injunction should issue as prayed for in the complaints.

7. The Court erred in failing to find that in a court review of an order of the Interstate Commerce Commission the range of issues is narrow, being limited to a determination of whether or not the Commission's order violated the Constitution, exceeded powers delegated by statute, or was such an arbitrary exercise of power as virtually to transcend the authority conferred.

8. The Court erred in substituting its judgment for that of the Interstate Commerce Commission on administrative matters which have been placed by Congress

within the jurisdiction of the Interstate Commerce Commission.

9. The Court erred in weighing the evidence and reaching conclusions upon administrative matters contrary to those found by the Interstate Commerce Commission.

10. The Court erred in failing to find that the order of the Commission was:

a. within the jurisdiction of the Commission;
b. supported by substantial evidence;
c. founded upon essential findings of act;
d. free from any error of law;
e. free from abuse of discretion or power by the Interstate Commerce Commission.

11. The Court erred in ascribing any weight to the Commission's failure to make a finding in its report as to inbound charges on ex-barge grain from St. Louis and Kansas City, Mo., or as to the movement of such barge grain although the facts as to such rates and such movement were contained in the record before it.

12. The Court erred in finding that the reference by the Commission to sixth-class rates (27.5 per cent of first-class) as having been prescribed or approved as a maximum reasonable basis of rates on grain in official territory referred only to cases involving local rates on grain, and not to cases involving reshipping or proportional rates as applied to ex-rail or ex-water grain.

13. The Court erred in finding that there was no evidence in the record to support the finding of the Commission that the proposed schedules will not prohibit the movement by barge-rail, even to Trunk Line Territory. The Court further erred in connection with this finding in substituting its judgment, from the evidence on the point, for the conclusions reached by the Interstate Commerce Commission upon that evidence.

14. The Court erred in finding that the breakdown of the rail rate structure referred to by the Commission related to the publication by western lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

15. The Court erred in finding that if the proposed rates were to become effective, ex-barge grain would pay a greater charge upon reshipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories.

16. The Court erred in finding that if the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for purchasers of grain at Chicago to purchase ex-barge grain.

17. The Court erred in finding that if the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

18. The Court erred in finding that the natural transportation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market; that the grain of producers enjoying cheap water transportation is sold delivered at Chicago; that the measure of the inbound rate has no effect upon the Chicago price; that it only affects the net price to producers, and that producers who cannot use water

transportation are under no disadvantage whatsoever because of the transportation advantage of other farmers located upon the waterways.

19. The Court erred in finding that if the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

20. The Court erred in finding that the action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

21. The Court erred in finding that the Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of section 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 or contrary to the National Transportation Policy enacted by the last said act; and that the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

23. The Court erred in failing to hold that the evidence supports the findings and conclusions of the Interstate Commerce Commission, among which are the following:

(a) That as originally published the so-called northwest proportional rates from Chicago applied on grain originating at points in northwest territory which was specifically defined and did not include any origin points in Illinois.

(b) That the application of the proportional rates to ex-barge traffic will result in a breaking down of the established grain rate structure from west to east.

(c) That the proportional rates from Chicago to central territory destinations on grain originating in Trans-Mississippi River territory are uniformly 3 cents less than the proportional rates applicable on traffic originating in northwest territory, thus maintaining the equalization prescribed in *Southwestern Millers League* v. *Atchison, T. & S. F. Ry. Co.*, 173 I. C. C. 86, 227 I. C. C. 795, 231 I. C. C. 130, and that if the suspended schedules are found justified the increases in the rates to the central territory points named would range from 1.5 to 7.5 cents and to the eastern points named the increase would be substantially 8.5 cents.

(d) That the proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth class rates (27.5 per cent of first class) which have been prescribed or approved as a maximum reasonable basis and not unreasonable or otherwise unlawful on grain or grain products within official territory.

(e) That to central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than all-rail rates.

(f) That the application of the barge rates to Chicago, plus rail proportionals beyond, bring about evasions of the principle of the Fourth Section of the Interstate Commerce Act.

(g) That the proposed schedules have the effect of maintaining the existing grain rate structure which has already been partially disrupted in the State of

Illinois by the application of the proportional rates on ex-barge grain, and that if the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of Fourth-Section evasions, also disrupt the grain rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

(h) That the application of proportional rates to ex-barge grain discriminates against all-rail movements and in favor of water-rail movements.

(i) That the application of the proportional rates on ex-barge grain has already broken down a portion of the Illinois grain rate structure to Chicago; and an imminent break-down of the grain rate structure east of Chicago is indicated.

(j) That to central territory the barge-rail combination under the proposed schedules will still be generally lower than the all-rail rate from Morris, Ill., a representative origin, via Chicago to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combination being 1.75, 4.75 and 0.75 cents respectively, lower than the all-rail rate.

(k) That to trunk-line territory the inbound barge movement represents a very small portion of the total haul, but about 6 per cent, and to this territory the barge-rail combinations are far below the local rates from the reshipping points in contravention of the Fourth Section rule, while the all-rail rates are in strict conformity with that rule.

(l) That the rail-lake-rail rates from the northwest do not contravene Fourth Section principles or jeopardize the all-rail rate structure.

(m) That the reshipping or proportional rates are in their essence balances of through rates and said

balances are, of course, determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service.

(n) That the respondents are justified under section 1 in treating the ex-barge traffic the same as local or truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the Act.

24. The Court erred in failing to dismiss the complaints.

APPENDIX 4.

Findings of the Commission.

The following findings of fact, among others, were made in the several decisions, taking up first the decision of Division 2 (246 I.C.C. 353):

The principal points from which grain is barged into Chicago are shown with the distances to Chicago (355).

There is shown the amount of grain received at Chicago by years from 1932 to 1939, inclusive, with the transportation facility used on the inbound movement (355, and Appendix I to Division 2 decision).

The annual production of corn in the State of Illinois from 1932 to 1938, inclusive, is stated (355).

The reason for lake-arrival corn in 1935 to 1937 was shown to be due to the drought in Illinois and in the West in 1934 and 1936 (355).

"Ordinarily, corn is a surplus crop in the portion of Illinois and the small part of Indiana here considered" (355).

This particular Illinois area considered by the Chicago grain dealers as within their trade territory, was specifically set forth (355-356).

"Much of the 65,774,000 bushels of corn received in Chicago in 1939 via rail, and all of the 13,206,000 bushels received over the Illinois Waterways, originated in this section" (Illinois, above referred to) (356).

"In addition to being served by many western rail lines, this producing section is also served by certain of the eastern rail-line respondents in this proceeding, in-

cluding The New York Central Railroad Company" (356).

"Chicago is the greatest corn market in the world and the record in the instant proceedings shows that during 1939 the six Chicago protestants controlled 83 per cent of all the grain coming into this market. They also operate all of the public elevator or storage space at Chicago." (356).

The nature and level of the rail-rate structure from this Illinois area to Chicago is then shown (356).

"Of the 13,206,000 bushels of corn moving into Chicago over the Illinois Waterways during 1939, the record shows that 13,094,962 bushels were transported by six barge lines" (356-357). These six are then named (357) showing the number of bushels and the number of trips made by each.

It was found that practically all the corn transported by the Allied Barge Corporation, and most of that transported by Mechling Barge Line was loaded into barges at Morris or Patonville, Illinois (357).

The Mechling Barge Line was found to have no agreement with respondents with respect to shipments of grain beyond Chicago (357).

The charges of the Mechling Barge Line for transportation to Chicago were found and set out by the Division (357).

The evidence regarding Cooperative Allied Grain Dealers Corporation was carefully considered and the facts as divulged thereby stated (358). These cover the locale of its operations, the handling of its grain by the Allied Barge Corporation, the method of so handling, the charges therefor, and arrangements between it and Continental Grain Company (358-359).

It was found that neither the Cooperative Allied Grain Dealers Corporation or the Allied Barge Corporation had

any agreement with respondents with respect to the shipment of grain beyond Chicago (359).

The evidence of the Federal Barge Line was considered. It was found to be a common carrier; that it hauled little, if any, grain to Chicago from the origins on the Illinois Waterways (359).

The position of the Inland Waterways operating the Federal Barge Line was carefully considered (362), and it was found in connection with their contentions:

(a) "As to section 1, as will be later explained, the rates resulting from the proposed schedules are substantially lower than rates which we have prescribed or found not unlawful on grain within official territory."

(b) In connection with its section 2 allegation, it was found:

> "In *Ex-River Grain from St. Louis to the South*, 203 ICC 385, wherein this protestant also made the same contention as to the section 2 allegation, Division 3 found that the service in the cases of ex-rail and ex-water transportation is not made under substantially similar circumstances and conditions." (363)

(c) "Under the Interstate Commerce Act, as amended September 18, 1940, section 3(1) of part I, undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water, for example, is not unlawful." (363)

It was found that this barge line has no common arrangement with respondents for a through route, nor has a formal arrangement been entered into in connection with filed or unfiled barge rates (363).

In further considering contentions of the Federal Barge Lines, the Division states at page 376:

> "The Federal Barge Lines alleges that discrimination, prejudice, and preference will result if the

application of the proportional rates is to continue on ex-lake traffic and to be discontinued on ex-barge traffic. In *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 524, it was stated:

> 'To bring a difference in rates within the prohibition of section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions.'

"In *Ex-River Grain from St. Louis to the South*, 203 ICC 385, in determining a question of alleged discrimination claimed to result through denying proportional rail rates out of the reshipping point on ex-river grain moving into that point on unfiled rates while continuing to apply proportional rates on ex-rail grain, division 3 said, on page 390:

> 'It does not appear that respondents' proposal would be unjust to any shipper. The service in the transportation of the ex-rail and ex-water traffic is not under substantially similar circumstances and conditions. Proportional rates are factors of through rates and such factors may differ with differences in origins or with differences in the character of transportation to the point from which the proportional factors apply.'

"It is asserted by protestants that the weight of authority is against the principle above stated, citing many of our reports and decisions of the United States Supreme Court as well as certain decisions of the English courts. These same decisions were cited in a petition of the Inland Waterways Corporation, operating the Federal Barge Lines, for rehearing and reconsideration in the report from which the above quotation is taken, and after review by the entire Commission that petition was denied."

The rules of the Board of Trade of Chicago were carefully considered, and the facts with regard to such rules and their application were stated. It was found that these rules are trade or commercial practices which do have a definite bearing on the purchase price of grain bought through the market, but which rules have no direct bearing whatever upon the legality of respondents' proposed schedules (360).

The evidence in connection with the elevator capacity was carefully considered, and the facts with regard thereto stated (360-361).

Comparisons were made as to the differences in cost of transportation from this origin area to Chicago, via the different forms of transportation, there being set out in a table what the farmers actually received for the grain in connection with each different type of transportation (361).

It was found that all grain purchased in the Chicago market is either sold f.o.b. or c.i.f. Chicago market price (363).

"A considerable quantity of grain received in the Chicago market is trucked in. Such grain is not, and never has been, accepted for registration nor recorded for transit, and, therefore, has not been able to engage the proportional rates here in issue" (364).

It was found that the grain arriving at Chicago via motor truck originates in the same area as the barged grain (364).

"Both trucked and barged grain is sold in the same consuming territory" (364).

"As originally published, the so-called 'Northwest' proportional rates from Chicago applied on grain originating at points in northwest territory which was specifically defined, and did not include any origin points in Illinois" (365).

The Division sets out at the bottom of page 365, a table illustrating the various rail rate levels applicable east of Chicago. This table carries an illustration of the various proportional rate levels together with the local rate level.

The Division noted that if the suspended schedules were found justified, resulting in the application of the local rates, the increases in the rates to the Central Territory points would range from 1.5 to 7.5 cents, and to the eastern points named, the increase would be uniformly 8.5 cents (366).

The rules covering the application of the various proportional rates were stated and considered (367 *et seq.*)

"The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois." (375.)

"If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain-rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore." (375.)

"To now conclude that the suspended schedules should be found not justified would, in effect, be recognizing a common arrangement between the barge lines and the rail carriers for a continuous through route, despite the fact that the evidence definitely shows none exists. A common arrangement cannot be inferred" (380).

"The application of the proportional rates here in issue on ex-barge grain has already broken down a portion of the Illinois grain-rate structure to Chicago, and an imminent break-down of the grain-rate structure

east of Chicago is also indicated by the evidence. Tariffs on file here show that during the pendency of this proceeding the rates on corn have been substantially reduced within the State of Indiana, as well as from Indiana to Chicago and to certain stations in Ohio." (380-381.)

The Division found that the schedules under suspension were not shown to be unlawful (381).

Findings carried in the decision of the entire Commission (248 I.C.C. 307), are as follows:

"The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory."

"To Central Territory, the barge-rail combinations, even under the proposed schedules will still be generally lower than the all-rail rates."

"To Trunk Line Territory, the inbound barge movement represents a very small proportion of the total haul. * * * To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule."

"To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates."

"The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are there-

fore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure."

"The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul, and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively."

"Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in

their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations."

"The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under Section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act."

"On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered."

No. 175

In the Supreme Court of the United States

OCTOBER TERM, 1942

INTERSTATE COMMERCE COMMISSION, ET AL.,
APPELLANT

v.

INLAND WATERWAYS CORPORATION, ET AL.,
APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION, APPELLANT

DECEMBER 1942.

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OCTOBER TERM, 1942

No. 175

INTERSTATE COMMERCE COMMISSION ET AL.,
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v.

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APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION, APPELLANT

OPINIONS BELOW

The initial report and order of the Interstate Commerce Commission (R. 18–353)[1] is reported in 246 I. C. C. 353. The report of the Commission on reconsideration (R. 47) is reported in 248

[1] The full record in this case consists of the transcript of the proceedings before the specially constituted district court, together with exhibits which include the full transcript of the record before the Interstate Commerce Commission. By stipulation many of the exhibits produced before the Commission have been omitted in the printing.

I. C. C. 307. The findings of fact and conclusions of law of the District Court (no opinion was filed) are reported in 44 F. Supp. 368 (R. 1663).

JURISDICTION

The decree of the District Court was entered April 16, 1942 (R. 1677). The petition for appeal was filed and allowed on May 21, 1942. Jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 219–221 (U. S. C., Title 28, Secs. 47, 47a), and under section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936 (U. S. C., Title 28, Sec. 345). Probable jurisdiction was noted on October 12, 1942.

QUESTIONS PRESENTED

The ultimate question presented in this case is the validity of an order of the Interstate Commerce Commission vacating an order, made under the authority of section 15 (7)[2] of the Interstate Commerce Act, suspending certain tariffs of appellant rail carriers which deny the use of existing out-bound proportional rates on grain arriving at designated rate-break points by barge via Illinois Waterways when shipped by rail from such rate-break points to destinations in central and eastern territory. Subordinate questions presented are:

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[2] See Appendix, *infra*, p. 65.

1. Whether the district court transcended its powers by substituting its judgment for that of the Commission upon a purely administrative matter.

2. Whether as a matter of law the tariffs in question were invalid under sections 2 and 3 of the Interstate Commerce Act.

3. Whether the Commission acted upon substantial evidence in finding that the tariffs in question were justified and not otherwise unlawful.

4. Whether the Commission fully performed its duties in the proceedings before it.

STATUTES

The pertinent portions of the Interstate Commerce Act are reproduced in the Appendix hereto.

STATEMENT

Two complaints were filed in the district court, one by Inland Waterways Corporation (R. 1) and the other by Cargill Incorporated and four other grain elevator companies (R. 133). These complaints sought to enjoin and set aside the operation and effect of an order of the Interstate Commerce Commission issued December 1, 1941, in *Grain Proportionals Ex-Barge to Official Territory*, I. & S. Docket No. 4718. Supporting this order the Commission had issued two reports, 246 I. C. C. 353 and 248 I. C. C. 307 (R. 18–353, 47). The United States, the Interstate Commerce Commission and six of the railroad companies whose

proposed tariffs were involved were named defendants in each of the complaints.

Final hearing before the court below, specially constituted of three judges, was held at Chicago, Ill., February 6, 1942. The two causes were consolidated for hearing and disposition. On the same day the Secretary of Agriculture and A. L. Mechling, doing business as A. L. Mechling Barge Line, were permitted to intervene as parties plaintiff and seven western trunk-line railroads were permitted to intervene as parties defendant (R. 206). At the same time also the Attorney General appeared in behalf of the United States and filed answers in which he declined to defend the order of the Commission on the ground that to do so would require him to assert a position on behalf of the United States which was being attacked by the head of a coordinate branch of the Executive Department of the Government (R. 197). The United States is not a party to this appeal.[3]

On April 16, 1942, the court below, without rendering an opinion, filed findings of fact and conclusions of law and entered its final decree (R. 1663, 1667). From this decree a direct appeal was taken to this Court.

PROCEEDINGS BEFORE THE COMMISSION

By tariffs filed to become effective October 15, 1939, the appellant eastern lines railroads pro-

[3] *Interstate Commerce, et al.* v. *Oregon-Washington R. and N. Co.*, 288 U. S. 14.

posed to restrict their proportional or reshipping rates on grain and grain products, in carloads, from Chicago, Ill., and other related rate-break points, to eastern destinations so that they would not apply on ex-barge traffic over the Illinois Waterways. Following protests, including those of appellees herein the Commission, pursuant to section 15 (7) of the Interstate Commerce Act,[4] suspended the operation of these tariffs and entered upon an investigation of their lawfulness (R. 15). This suspension order was dated October 14, 1939, and deferred the use of the tariffs until May 15, 1940, at which time the Commission's power to suspend became exhausted.[5] Subsequent to that date the respondent carriers voluntarily postponed the effectiveness of the tariffs pending decision of the Commission.

The proceedings before the Commission went through the usual course. Extensive hearings were had followed by the examiner's proposed report which was issued after the suspension power of the Commission had been exhausted. The case was briefed and argued orally before Division 2 of the Commission. On July 31, 1941, the Commission, Division 2, issued its report and order wherein it found that the tariff schedules were not unlawful. The suspension order was vacated

[4] See Appendix, *infra*, p. 65.

[5] Sec. 15 (7). The suspension period is seven months: see Appendix, *infra*, p. 65.

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and the proceedings discontinued as of August 30, 1941. Thereafter petitions for rehearing and reconsideration were filed. On December 1, 1941, the entire Commission issued its report and order on reconsideration. Again in this report, while modifying in some particulars the prior report of Division 2, the Commission found the proposed tariffs to be just and reasonable and not otherwise unlawful. The suspension order was vacated and the proceeding discontinued as of December 22, 1941 (R. 77).

RATE BACKGROUND

From producing and gathering points in the west rail rates on grain and grain products apply to points known as gateways or rate-break points. Chicago is the principal rate-break point involved in this proceeding. From Chicago and other gateways to destinations in the East certain proportional rates are applied to make up the through transportation charges from origins beyond Chicago to ultimate destinations in Official Territory.[5] Local rates are also published.

On movements of grain from Chicago to destinations in Central Territory there are in effect

[5] Territory east of the Mississippi River and north of the Ohio and Potomac Rivers except the northern peninsula of Michigan. Official Territory is itself subdivided: (1) Central Territory is the area west of a line drawn through Pittsburgh and Buffalo; (2) Trunk-line Territory lies between Central Territory and New England Territory; (3) New England Territory is composed of the New England States.

four levels of rates: (1) Trans-Mississippi; (2) Northwest; (3) Illinois Reshipping; (4) Local. The Trans-Mississippi basis of proportional rates is applicable when the out-bound rail movement from Chicago is comprised of rail grain that has originated in Trans-Mississippi Territory.[7] The Northwest proportional basis is applicable when the out-bound shipment consists of grain which has originated in Northwest Territory.[8] The Illinois Reshipping proportional rates apply when the out-bound shipment consists of rail grain which has originated in Illinois. By specific tariff publication the Illinois Reshipping proportionals are not available on grain which reaches Chicago by water. The one exception to this territorial basis of proportional rates to Central Territory is grain that arrives by barge via Illinois Waterways. Such ex-barge grain moves on the Northwest proportional rates although the greater volume of this traffic is corn from Illinois (R. 1654, Ex. 19).

The local rates to Central Territory points apply on local grain, grain localized by the expiration of the transit privilege, grain that comes

[7] Comprising generally the States of Arizona, Arkansas, Colorado, Kansas, Missouri, New Mexico, Nebraska, Oklahoma, Texas, Utah, and certain stations in Iowa and South Dakota (R. Exhibit 1).

[8] Comprising generally North Dakota, South Dakota, Minnesota, Wisconsin, upper peninsula of Michigan, Montana, Wyoming, Idaho, Oregon, and Washington, and certain Canadian provinces (R. Exhibit 1).

in by truck and in-bound rail grain that has moved on truck-barge competitive intrastate rates.

On movements of grain from Chicago to destinations in Trunk Line and New England Territories there are two levels of rates: (1) Proportional; (2) Local. The proportional rate from Chicago is the same regardless of origin. However, from Peoria, a gateway involved in this case, to Trunk Line Territory, a differential exists as between Northwest grain and Trans-Mississippi grain designed to equalize the difference in the in-bound rate from Trans-Mississippi Territory to Peoria and Chicago, respectively, as compared with the identical in-bound rate from Northwest Territory to Chicago or Peoria (R. Ex. 7).

It is also to be noted that where the grain is for export there is a substantial differential in both the proportional and the local rates, respectively.

The local rates to Central and New England Territory points apply on local grain, grain localized by the expiration of the transit privilege, grain that comes in by truck and in-bound rail grain that has moved on the truck-barge competitive intrastate rates.

The varied applications of these rates from Chicago to representative destinations in Central and Trunk Line Territories have been tabulated in the first report of the Commission (R. 18–365).

There is a local level of rates applicable on movements of grain between points within Official Territory known as the Official Territory level. From the gateways the local rates are higher than the proportional rates. On rail grain that moves from Illinois points via Chicago to points in Central Territory the "Reshipping" proportionals apply which together with the in-bound rates reflect the Official Territory local level. From the same origins to Trunk Line Territory points joint through rates via Chicago and other gateways are in effect. On such movements the proportional rates from Chicago cannot be applied. These joint through rates likewise reflect the Official Territory local level of rates.

The rates from the various western origins to Chicago plus the applicable proportionals from Chicago to destination make up the through transportation charges. The history of these proportional rates shows a continuing design to maintain proper relationships of the over-all charges for the through transportation.

Proportional rates from Chicago to destinations in Central Territory had been previously prescribed by the Commission to equalize the in-bound rate to Chicago from Trans-Mississippi and Northwest Territories the latter in-bound proportional rate being 3 cents lower than the

former.[9] This rate relation was referred to by the Commission in its first report (R. 18–366) citing *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co.*, 231 I. C. C. 130, where it was stated:

> Kansas City is what is known as Trans-Mississippi River origin territory, and Minneapolis is in northwest territory. To most of the destination territory we required a parity of through rates from Minneapolis and Kansas City on traffic from beyond. This was accomplished by making the factors of the combination rates 3 cents higher, beyond Chicago and other related eastern gateways (no one factor through rates being in effect), on traffic from beyond Minneapolis, than on traffic from beyond Kansas City, because of inbound rates to Chicago 3 cents less from Minneapolis than from Kansas City.

Thus the application of Northwest proportional rates from Chicago to Central Territory destinations was designed to equalize the through transportation charges from origins in Trans-Mississippi Territory.

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[9] "We there pointed out (225 I. C. C. 195) that there were no one-factor rates from and to the affected points, all through rates being combinations of proportionals to and from Chicago; that the factors to Chicago were those prescribed by us on further hearing in *Grain and Grain Products*, 205 I. C. C. 301, and were 3 cents lower from Minneapolis-Duluth than from the Missouri River. * * *." *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co.*, 227 I. C. C. 795, 796.

The Northwest proportionals were originally and have continued to be applicable on grain arriving at Chicago by lake. As first published ex-lake grain was limited to grain originating in Northwest Territory, this limitation reading:

> * * * on shipments which arrive by boat lines at Chicago, Ill., originating at any of the points in the defined territory."

In 1932, this limitation was amended to read:

> On shipments which arrived by boat line at Chicago, Ill., Kewaunee, Milwaukee or Manitowoc, Wis.

In 1933, the Illinois River having been opened to traffic, grain produced in Illinois began moving in volume to Chicago by barge from river points. Because of the change in wording making the Northwest proportional rates available to grain arriving at Chicago via "boat line," this grain became entitled to the use of the Northwest proportional rates on rail movement outbound from Chicago to Central Territory, notwithstanding that it had originated in Illinois and, had it moved to Chicago by rail, would have taken the Reshipping rate which was designed to afford the proper outbound basis of charge for grain originating in Illinois. Thus this grain was and is being reshipped from Chicago to Central Territory destinations on proportional rates which had originally been intended to apply only to grain from Northwest Territory.

The tariffs providing for the use of the proportional rates to destinations in Trunk Line Territory provided that the rates were applicable on traffic reaching the gateway via "rail or water transportation line" (R. Ex. 1, p. 19). Thus these proportional rates became available on ex-barge grain arriving at Chicago via Illinois Waterways.

In summary, at the time that the tariffs in question were filed and at present the single level of proportional rates from Chicago apply uniformly on ex-rail, ex-lake, ex-barge to Trunk Line and New England Territories. To Central Territory three levels of proportional rates apply: (1) Trans-Mississippi; (2) Northwest; (3) Reshipping (Illinois). Only the Northwest rate applies on ex-lake and ex-barge grain. The local rate applies on local, ex-truck, or wagon grain, and ex-rail grain which arrives at Chicago from Illinois points under intrastate rates which had been published to meet barge competition.

The tariffs in issue proposed to restrict the application of the proportional rates so that they would not apply to ex-barge grain, thus leaving in effect the local rates to apply on such grain from Chicago and related gateways.

THE REPORT OF THE COMMISSION

The issues before the Commission were the lawfulness, under Sections 1, 2, and 3 of the Act, of the tariffs which thus limited the application of the proportional rates.

The report of the Commission, Division 2, issued on July 31, 1941. After reciting the history of the proceedings and the effect of the suspended tariff (R. 18–353), the report proceed to a discussion of the evidence. This included the history of the Illinois waterways (R. 18–354), the location of the principal points from which grain is barged to Chicago (R. 18–355), the volume of grain moving in and out of Chicago (R. 18–355), the corn producing section of Illinois and part of Indiana (R. 18–355), the railroads serving this territory (R. 18–356), the published rail rates into Chicago from the principal producing points in that territory (R. 18–356), the volume of barge movement into Chicago and the charges for barge transportation (R. 18–356), the Chicago Board of Trade practices (R. 18–359), the effect of barge versus rail delivery costs at Chicago (R. 18–361) and proportional and local rates from Chicago to representative eastern destinations (R. 18–365). Discussing the issue of the reasonableness of the local rates on this traffic, the report points out that "if the suspended schedules are found justified, resulting in the application of the local rates, the increases in the rates to Central Territory points would range from 1.5 to 7.5 cents, and to the eastern points named the increase would be uniformly 8.5 cents" (R. 18–366). The report rejected the validity of the contention that the local rates compare unfavorably with the average revenue secured

by the rail carriers from all freight handled for its average distance and pointed out that "these local rates range from 17.3 to 25.7 percent of first class and are substantially under the level of the sixth-class rates (27.5 percent of first class) which we have found, in the reports cited in the footnote, to be a maximum reasonable basis, or not unreasonable or otherwise unlawful on grain and grain products within official territory" (R. 18–366).

The report shows the effect of continuing the existing proportional rates on ex-barge grain. While the proportional rate tariffs provide "that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to final destination," the report finds that this provision was not effective on the existing barge-rail combinations, thus (R. 18–374):

> For example, such combinations [barge-rail proportionals] result in lower through charges to the Atlantic seaboard than the local rates to the same destinations from intermediate origin points on: (1) Domestic grain from all points in Central Territory (Chicago and east) west of a line drawn from Bay City, Mich., through Jackson and Sturgis, Mich., and Kendallville, Fort Wayne, Marion, Westville, Indianapolis, Greensburg, Ind., to Aurora, Ind.; (2) export grain from all points in Central Territory (Chicago and east) west of a line drawn from Atkins, Mich., through

> Oxford, Ann Arbor, Hanover, and Pittsford Junction, Mich., and thence along the Ohio-Indiana State line to the Ohio River; and (3) export traffic of barley, corn, oats, rye, and wheat from all points in Central Territory (Chicago and east) west of a line drawn from Painesville through Lordstown to East Liverpool, Ohio.

The report then goes on to find that (R. 18–375):

> The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois. See *Corn Grits from Kankakee, Ill., to Battle Creek, Mich.*, 237 I. C. C. 413. If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

On the question of discrimination, preference and prejudice the report found on the authority of *Ex-River Grain From St. Louis to the South*, 203 I. C. C. 385, that the service in the transportation of the ex-rail and ex-water traffic is not under substantially similar circumstances and conditions (R. 18–376).

The ultimate finding of the Division was (R. 18–381):

> We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates, and find that the schedules under suspension are not shown to be unlawful.

The report of the Commission on reconsideration again found the suspended schedules not unlawful.[10] Since the date of the hearing in the case the barge lines by the Transportation Act of 1940 were made subject to the Commission's jurisdiction. The Commission report took notice of the fact that the barge lines had filed with the Commission their port-to-port grain rates (R. 49).

The Commission summarized the facts and found them to be as detailed in the first report (R. 55).

The report compared the in-bound barge rates to Chicago with the in-bound rail rates. It found them to range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles as contrasted

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[10] So far as the issues in this case are concerned, the findings of Division 2 and the findings of the Commission on reconsideration are identical. The modification and clarification spoken of in the last report (R. 55) refers only to the lawfulness of the application of proportional rates to ex-barge grain under existing tariffs. In contrast to the finding of Division 2, the report on reconsideration holds that the proportional rate may be applied on this traffic notwithstanding that the other factor of the through rate is not on file with the Commission so long as the policing provisions are strictly complied with and adequate proof is furnished with respect to the identity of the in-bound water carriers, the origin of the traffic, and the rate paid thereon (R. 51).

with the in-bound rail rates ranging from 9.5 to 13 cents (R. 52).

Particularly the Commission found (R. 52):

> * * * The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 percent of first class and are substantially below the level of the sixth-class rates (27.5 percent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.
>
> To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Cleveville, Ohio, the barge-rail combinations will be 1.75, 4.75, and 0.75 cents, respectively, lower than the all-rail rates.
>
> To trunk-line territory, the in-bound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but 0.6 percent. To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule,

while the all-rail rates are in strict conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the in-bound barge rate of 2.75 cents plus the out-bound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5-cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the in-bound interstate rail rate of 9.5 cents plus the out-bound rate of 26 cents), or 1 cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents in-bound plus 34.5 cents out-bound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the in-bound rail rates. The in-bound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

On the issue under Sections 2 and 3 the Commission found (R. 54):

> Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory, and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators, and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates, although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forefeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are, of course, determined by the measure of the in-bound and through rates, and properly may vary according to

> the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations.

The ultimate finding of the Commission was (R. 55):

> On reconsideration of the record in the light of petitions and replies thereto and our prior decisions, we find that:
>
> (1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.
>
> (2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

THE FINDINGS OF THE COURT BELOW

The conclusion of the court below upon the merits was (R. 1676):

> The order of the Interstate Commerce Commission discriminates against water competition by the users of barges.

In support of its conclusions of law the court below made independent findings of fact, based upon the evidence before the Commission, among which were the following (R. 1674):

> The breakdown of the rail rate structure referred to by the Commission related to

the publication by western lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

* * * * *

If the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for purchasers of grain at Chicago to purchase ex-barge grain.

If the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

The natural transporation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market. The grain of producers enjoying cheap water transportion is sold delivered at Chicago. The measure of the in-bound rate has no effect upon the Chicago price; it only affects the net price to producers. Producers who cannot use water transportation are under no disadvantage whatsoever because of the transporta-

tion advantage of other farmers located upon the waterways.

If the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

* * * * *

The Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of Section 3 (4) of the Interstate Commerce Act, as amended by the Transportation Act of 1940, or contrary to the National Transportation Policy enacted by the last said act; but the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

SUMMARY OF ARGUMENT

It is well established that findings of reasonableness under section 1, of unjust discrimination under section 2, and of undue preference or prejudice under section 3, of the Interstate Commerce

Act, are administrative questions of fact for determination by the Commission. *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457; *Nashville Ry. Co.* v. *Tennessee*, 262 U. S. 318, 322; *Board of Trade* v. *United States*, 314 U. S. 534.

A court may not substitute its judgment for that of the Commission in respect of these matters. *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314; *United States* v. *Trucking Co.*, 310 U. S. 344, 352.

In the instant case the Commission found that the application of the local rates to ex-barge traffic would not result in violations of sections 1, 2, or 3 of the Act.

The considerations which lead the Commission to the conclusion that the rates were not unreasonable were set out in its two reports in this case. These included rate comparisons based upon total transportation charges from points of origin to final destination; comparison of barge rates versus rail rates in-bound to Chicago; barge-rail combinations versus all-rail combinations to Official Territory destinations; and the local rates in the light of prescribed maximum reasonable rates prescribed by the Commission on grain and grain products. These were proper considerations *Youngstown Co.* v. *United States*, 295 U. S. 476, 480; *United States* v. *Northern Pacific Ry. Co.*,

288 U. S. 490, 500. The Commission likewise took into consideration the effect of continuing the existing proportional rates on ex-barge traffic and found that fourth section violations resulted and that the rail grain rate structure was being broken down. Compare *Board of Trade* v. *United States, supra; Northern Pacific Ry. Co.* v. *United States,* 316 U. S. 346.

On the issue of unjust discrimination and undue prejudice the Commission found that the circumstances and conditions surrounding the inbound and combination movement of the ex-barge traffic so differed from the combination ex-rail and ex-lake traffic as not to constitute violation of sections 2 or 3.

The Commission properly compared the entire movements from origin through Chicago to final destination. The contention that the Commission must confine its consideration to the movements east of Chicago is not valid. To sustain this contention would be to destroy the entire conception of proportional rates.

Proportional rates have long been recognized. They are components of a through rate. *Hocking Valley Ry. Co.* v. *Lackawanna,* 224 F. 930; *St. L. S. W. Ry. Co.* v. *United States,* 245 U. S. 136, 139. The justification for maintaining a proportional rate lower than the local rate rests upon the through movement as presenting differing circumstances and conditions. The same dis-

tinction justifies rates in the nature of proportional. The validity of the latter has long been recognized. *Texas & P. Ry. Co.* v. *Interstate Commerce Commission,* 162 U. S. 197; *Rates on Bunker Coal,* 73 I. C. C. 62; *Central Pennsylvania Coal Producers Ass'n* v. *B. & O. R. Co.,* 196 I. C. C. 203. The validity of such rates has been recognized in the Interstate Commerce Act itself. Section 6 (11) (b).

Where differentiating circumstances are found in the length and nature of the in-bound and through service and the measure of the in-bound and through rates the Commission may lawfully find that no violations of sects. 2 and 3 are present.—*Ex-River Grain from St. Louis to the South,* 203 I. C. C. 385, 390.

The Commission properly gave consideration to the prescribed relation of the proportional rates to Official Territory, the rate structure as a whole and the imminent break-down of these rate relations in the continued application of the proportional rates on ex-barge grain.

The matter of the maintenance of the grain rate structure and the effect of the use of the proportional rates on the structure was a valid consideration. *Board of Trade* v. *United States, supra; Northern Pacific Ry. Co.* v. *United States, supra; Youngstown Co.* v. *United States, supra.* The record showed and the Commission found that the rail grain rate structure had already commenced to break-down and further disruption

was threatened. The court below erroneously found that the break-down of the rate structure referred to by the Commission related to the publication by the western lines of intrastate rates below the normal basis of the interstate rate.

Prior to the Transportation Act of 1940, the preservation of competition between carriers was considered to be in the public interest. *Mississippi Valley Barge Line* v. *United States*, 292 U. S. 282, 288. The powers given the Commission with respect to water transportation have always shown that differences in rates and practices as between rail and water carriers were contemplated. The Transportation Act of 1940 did not change this policy. This is demonstrated by the amendments to sections 3 (1) and 15 (a) (2) and the enactment of section 305 (e). So in according ex-barge traffic treatment different from that accorded ex-rail traffic the Commission did not offend against the National Transportation Policy but was merely exercising the administrative judgment which Congress has reposed in it. Compare *Scandrett* v. *United States*, 32 F. Supp. 995, affirmed 312 U. S. 661.

The conclusion of the Commission that the proposed rates would not discriminate unjustly against the traffic of the appellee barge lines in favor of the traffic of the lake lines in violation of section 3 (4) was properly based upon a finding of differentiating circumstances and conditions.

Pennsylvania Co. v. *United States*, 236 U. S. 351, 361. In so doing the Commission properly considered the differences between the lake and barge traffic.

The Commission considered the effect of the amendment to section 3 (4) on the basis of the record then before it and the fact that appellee barge lines had come within its jurisdiction under part III. The petitions of the barge lines for reconsideration raised legal questions only and no rehearing was sought to show other new or material facts which might influence the Commission to arrive at a different conclusion on the issue of the lawfulness of the application of the local rates to the ex-barge traffic. Nor did the appellee barge lines seek to supplement the record with evidence to enable the Commission to exercise its jurisdiction to prescribe proportional rates applicable to the barge traffic.

The Commission in exercising its powers under section 15 (7) is not required to consider and fix some other or different rates from the suspended ones (*Akron, C. & Y. Ry. Co.* v. *United States*, 22 F. 2d 199), although it may do so. Its refusal in this case to act under section 6 (11) (b) was not arbitrary since it found that the record was insufficient to warrant prescribing proportional rates on the traffic in question. Moreover, it stated that in a proper proceeding it might prescribe proportional rates on the ex-

barge traffic lower than the combination barge and local rail rates.

ARGUMENT

I

The issues presented to the Commission involved the performance of the administrative function of determining whether the exclusive application of the local rates to ex-barge grain traffic would result in violations of sections 1, 2, or 3 of the Interstate Commerce Act

It has been established by a long line of decisions that the courts will not review and weigh the evidence to determine whether rates are unreasonable, unjustly discriminatory or unduly prejudicial.

The finding of unreasonableness like that of undue prejudice, is a determination of fact by a tribunal "informed by experience." *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454. *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 665, 666.

In *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481, this Court said:

> It is not any and every discrimination, preference, and prejudice that are denounced by the Commerce Act. Section 3 * * * renders unlawful any *"undue or unreasonable"* preference or advantage, prejudice or disadvantage, * * * and in the first paragraph of amended Section 15 * * * it is rates, regulations, or

practices that in the opinion of the Commission are "*unjustly* discriminatory, or *unduly* preferential or prejudicial," etc., to which the prohibition is to be applied.

Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission * * *, and upon which its decisions, made the basis of administrative order operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power.

This principle was reemphasized in *Nashville Ry.* v. *Tennessee*, 262 U. S. 318, 322:

Every rate which gives preference or advantage to certain persons, commodities, localities or traffic is discriminatory. For such preference prevents absolute equality of treatment among all shippers or all travelers. But discrimination is not necessarily unlawful. The Act to Regulate Commerce prohibits (by sections 2 and 3) only that discrimination which is unreasonable, undue, or unjust. *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 219, 220; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481. Whether a preference or discrimination is undue, unreasonable, or unjust is ordinarily

left to the Commission for decision; and the determination is to be made, as a question of fact, on the matters proved in the particular case.

Again in *United States* v. *Trucking Co.*, 310 U. S. 344, 352, 353, this Court said:

> "It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed." And where a court substituted "its judgment as to the existence of preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so, [the court] obviously exerted an authority not conferred upon it by the statute." (Quoting from *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320) * * * the Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when "undue," "unjust," "unfair," and "unreasonable." And the courts have always recognized that Congress intended to commit to the Commission the determination, by application of an informed judgment to existing facts,

of the existence of forbidden preferences, advantages, and discrimination.

A case bearing many points of analogy to the instant case is *Board of Trade* v. *United States,* 314 U. S. 534. There the Commission after an investigation of the grain rate structure in the western district prescribed rate-break combinations as the exclusive basis of transit privileges at primary markets while at the same time transit privileges at interior points on routes passing through a primary market were allowed on the basis of lower rates in effect over competing routes between the same points. This court held that "whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of these questions of fact that have been confided by Congress to the judgment and discretion of the Commission" and that considering the whole history of grain rate regulation the differentiation between primary markets and interior points thus made by the Commission was not an undue or unreasonable discrimination forbidden by the Act. Compare *Northern Pacific Ry. Co.* v. *United States,* 316 U. S. 346.

Under the issues presented to it in this case the Commission was called upon to perform the purely administrative office of determining independently whether the rates in question were unreasonable or unjustly discriminatory or unduly prejudicial. In arriving at its decision that these

rates were not unlawful it took into consideration the many factors disclosed by a voluminous record. In two reports it set forth findings of fact which moved it to its decision. These factors as we shall endeavor later to show, were properly considered by it and afford a substantial and rational basis for the order which the court below has set aside.

II

The Commission's finding that the local rates as applied to the ex-barge grain traffic would not be unreasonable or result in an unjust discrimination or undue prejudice was based upon adequate findings with respect to the measure of the local rates and the measure of the in-bound and through rates, the length and nature of the in-bound and through transportation service, and other relevant facts and circumstances

The reasonableness of the local rates as such was not an issue before the Commission and is not contested here; the protests were to the subjection of the ex-barge traffic to the local rates. By the terms of the existing tariffs Illinois corn [11] which had arrived by rail at Chicago under intrastate tariffs, corn which had been trucked into Chicago, and corn which had forfeited the transit privilege, were not entitled to the use of the proportional rates outbound. To these classes of grain traffic the local rates were applicable.

[11] Corn was by far the bulk of ex-barge grain traffic (R. 1654, Ex. 19).

Corn moves into Chicago by truck in considerable volume.[12]

As has been shown in detail in the Statement (ante p. 12) the Commission in considering the reasonableness of the local rates as applied to ex-barge grain made many rate comparisons based upon the total transportation charges from points of origin to final destination. Barge rates versus rail rates into Chicago were compared. Barge-rail combinations versus all-rail combinations were shown both to Central and Trunk Line Territories. Representative examples were given. It was shown that the barge-rail combinations under the proposed tariffs would be generally lower than the all-rail rates. And from Morris, Ill., to destinations in Trunk Line Territory the barge-rail charges would amount to only 1.75 cents over the all-rail charges.

Furthermore, it was found that the proposed barge rates would not exceed the reasonable maximum basis which the Commission had already prescribed or approved as a maximum reasonable basis in Official Territory (Central, Trunk Line, and New England).[13]

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[12] In 1939, 5,005,000 bushels of corn were received by truck at Chicago as compared with 13,206,000 bushels arriving via Illinois Waterways (R. 18–383). The reasonableness of the local rates on ex-truck corn was unquestioned.

[13] In the Division's report the following cases were cited as instances where the Commission had approved or prescribed the maximum reasonable basis on grain and grain

In *Youngstown Co.* v. *United States*, 295 U. S. 476, 480, it was held that rate comparisons "while not a conclusive test of reasonableness of a rate under investigation, have probative value," citing *United States* v. *Northern Pacific Ry. Co.*, 288 U. S. 490, 500.

The Commission in examining the issues also took into consideration the effect of continuing the existing proportional rates on ex-barge traffic. It found that the Northwest proportional rates to Central Territory had never been designed to apply on grain originating in Illinois (R. 218, 273); that as a result of the use of these proportionals on ex-barge grain fourth-section violations existed and further that the grain rail rate structure was being broken down (R. 53).

The effect of the proposed tariffs upon producers and shippers of grain was considered. The Commission found that from May 1 to November 30, 1939, 7,305 carloads of corn were moved into Chicago by barge from the Illinois Waterways of which 1,160 carloads or 16 percent moved out on the proportional rates to Central and Trunk

products within Official Territory: *Indianapolis B. of T.* v. *Balt. & O. R. Co.*, 129 I. C. C. 675; *Grain and Grain Products*, 144 I. C. C. 497; *Valley Grain Co., Inc.* v. *Cleveland, C. C. & St. L. Ry. Co.*, 159 I. C. C. 223, 167 I. C. C. 190; *Co-operative Elevator Co.* v. *Wabash Ry. Co.*, 192 I. C. C. 583; *Goldcamp Mill Co., Inc.* v. *Akron, C. & Y. Ry. Co.*, 195 I. C. C. 329; *Grain and Products to Chesapeake & O. Branch Lines*, 196 I. C. C. 751; *Allen & Wheeler Co.* v. *Akron, C. & Y. Ry. Co.*, 225 I. C. C. 179.

Line destinations, 5,183 carloads or 71 percent moved out via lake and 235 carloads were disposed of locally leaving a balance of 725 carloads on hand (R. 18–366). It found that "the proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory," that the "operators will still have the benefit of the out-bound proportional rates where their in-bound haul is by rail or lake and also the benefit of the out-bound lake or lake-and-rail rates, irrespective of their in-bound haul, and this is likewise true of the Illinois shippers where their in-bound haul is by rail or barge, respectively" (R. 53).[14]

The Commission found the circumstances and conditions surrounding the in-bound and combination movement of the ex-barge traffic to differ sufficiently from those surrounding the in-bound and through movement of the ex-rail and

[14] In Appendix I of the first report it is shown that for the year 1939 corn receipts at Chicago by barge via Illinois Waterways were 13,206,000 bushels. Receipts by rail were 65,774,000 bushels. No ex-lake corn was received. In storage on the first of the year were 14,541,000 bushels. Corn moving out of Chicago by rail for the same year amounted to 21,664,000 bushels which under transit would exhaust the equivalent amount of in-bound rail billing leaving available for out-bound rail movement under proportional rates on corn arriving by other transport means 44,233,000 bushels worth of billing. Of the in-bound corn 32,535,000 moved out by lake and 30,710,000 bushels were consumed locally (R. 18–383, 384). Under these circumstances it is difficult to see as a practical matter wherein all in-bound corn which under transit loses its identity could not have been shipped by rail out of Chicago on the proportional rates.

ex-lake traffic as not to constitute a violation of Sections 2 and 3 of the Act.

III

In resolving the issues of unjust discrimination and undue prejudice under sections 2 and 3 (1), the Commission properly considered the entire movement of the grain as a basis for a finding of differing cirmumstances and conditions

Appellees have urged that in determining the existence of unjust discrimination under Sections 2 and 3 the Commission may not rely upon a dissimilarity of conditions prior to the rendering of the transportation service for which the charge in issue is assessed: that as a matter of law since the physical rail operation out of Chicago in moving ex-barge corn to eastern destinations is identical to the physical operation of moving any other corn from Chicago there cannot be two levels of rates. Of course there is no validity to this argument. There is no difference in the transportation of any corn considering only the movement from Chicago. To sustain this contention would be to destroy the entire conception of proportional rates based upon the theory of continuity of movement.

Proportional rates have had long-established recognition. They are components of a through rate. *Hocking Valley Ry. Co.* v. *Lackawanna,* 224 F. 930. Each proportional rate necessarily is a part of the through rate and is capable of

use only as such. *Great Northern Ry. Co.* v. *Sullivan*, 294 U. S. 458, 460; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 771. The justification for maintaining a proportional rate lower than the local rate on the same traffic between the same points, rests, therefore, upon the consideration of the through movement as presenting differing circumstances and conditions. The distinction has been made between true proportionals and rates in the nature of proportionals. But the same characteristics attend both, and both obtain legal sanction by virtue of differentiating factors reflected by the over-all movement of the commodity affected. Thus a lower basis of charge has been found justified where the movement into or out of the proportional rate point has been by means other than rail carriage. *Sand, Gravel, and Crushed Stone to Southern Illinois*, 160 I. C. C. 507, 524.

The legality of import and export rates was early enunciated in *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197. It was there held that a less charge on import traffic from ports to inland destinations than on like domestic traffic from and to the same points was lawful because the circumstances and conditions surrounding the two forms of traffic were dissimilar. In the instant case we have proportional rates lower on export grain than the domestic proportional rates. On the same grounds the

Commission has prescribed or approved ex-lake rates on grain and iron ore, lake cargo, and ex-river rates on coal all of which are lower than the corresponding local rates. The ex-lake rates apply from Lake Erie ports on grain and iron ore which has been brought to the ports by boat,[15] lake cargo rates apply to Lake Erie ports on coal which is to be carried from the ports by boat, and the ex-river rates apply from Ohio River ports on coal which has been brought to the ports by barge.[16]

In *Rates on Bunker Coal*, 73 I. C. C. 62, the Commission found that rates lower than corresponding local rates on coal for delivery at ports into vessels for fuel use by such vessels were not unlawful because they were attended by differing circumstances and conditions.

In *Central Pennsylvania Coal Producers Ass'n. v. B. & O. R. Co.*, 196 I. C. C. 203, the Commission found that there was no violation of Section 2 where railroads maintained "transshipment" rates in the nature of proportional rates which were lower than the corresponding local rates and where one set of transshipment rates was lower than the other. There the Commission said, p. 235:

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[15] *Buffalo Grain Cases*, 46 I. C. C. 570, 580; *Ex-Lake Ore from Chicago to Granite City*, 120 I. C. C. 75, 123 I. C. C. 503.

[16] *Bituminous Coal to Youngstown*, 163 I. C. C. 3. Compare *Youngstown Co. v. United States*, supra.

> Except as to traffic to nonadjacent foreign countries, the operators allege that the maintenance to the ports of Philadelphia and Baltimore of transshipment rates which are different for inside-the-capes than for outside-the-capes traffic, contravenes the provisions of Section 2 of the Act. As previously stated, the rail service rendered all transshipment coal is substantially the same. The coal which is charged the outside-the-capes rates, other than that which is exported, usually moves to New York Harbor or to New England, and that charged the higher inside-the-capes rates generally moves a relatively short distance by water to points within the respective harbors. Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed.

The court below has also taken the position that, the services from the rate-break point being identical, it follows as a matter of law that there can be but one applicable rate: that the Commission in passing upon issues of discrimination and prejudice under Sections 2 and 3 cannot look behind the rate-break point to find differentiating circumstances and conditions. As has been shown this is in the teeth of the long-established characteristics of proportional or reshipping rates and if sound would, as the Commission stated, abolish all

proportional rates which may be lower than the local rates between the same points.

The Interstate Commerce Act recognizes that there may be two different rates between the same points. Section 6 (11) (b) defines proportional rates as "those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water." Section 305 (e) provides that "differences in * * * rates, fares, charges * * * of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, etc." And in 307 (d) the Commission is directed in case of a through rail-water route to prescribe "such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water."

In concluding that the rates here in issue were not in violation of Sections 2 and 3, the Commission applied the principle that "any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge." *Interstate Commerce Commission* v. *Balt. & O. R. Co.*, 145 U. S. 263, 283. The Commission found differentiating circumstances and

conditions in the length and nature of the in-bound and through service and the measure of the in-bound and through rates.

A situation similar to the one here arose in *Ex-River Grain from St. Louis to the South,* 203 I. C. C. 385, 390. The Commission there stated:

> Protestants also stress the admission of respondents that there is no substantial difference between the transportation services performed on the ex-river and the ex-rail shipments and contend therefore that the respondents should not be concerned with the kind of carriers from which they receive their traffic. The contention disregards the basic principle of the all-rail rate adjustment. The proportional rates being equalizing factors of that adjustment are not designed for application to ex-river traffic. The corporation also contends that to charge ex-water shippers more than ex-rail shippers for the same service discriminates against the former, in violation of Section 2 of the Interstate Commerce Act. It does not appear that respondents' proposal would be unjust to any shipper. The service in the transportation of the ex-rail and ex-water traffic is not under substantially similar circumstances and conditions. The proportional rates are factors of through rates and such factors may differ with differences in origins or with differences in the character

of transportation to the point from which the proportional factors apply.

We submit, therefore, that the Commission properly looked at the transportation in question as a comparison of barge-rail and all-rail movements, and having found that there were sufficient distinguishing characteristics between the two, concluded that a rate for ex-barge traffic higher than for ex-rail was not in this case in violation of Sections 2 and 3. Even the dissenting expression of Commissioner Eastman does not challenge the administrative character of the Commission's action. His dissent went only to the soundness of the conclusion as administrative action (R. 55, 75).

IV

The Commission, in sustaining the lawfulness of the suspended tariffs properly gave consideration to the prescribed relation of the proportional and local rates to Official Territory and the rate structure as a whole and to the imminent break-down of these rate relations in the continued application of the proportional rates to ex-barge grain

The grain rate structure has been built up upon a system of rate-break combinations in lieu of one-factor through rates from country origins to various Central Territory destinations and sensitively related, separate proportional rates for outbound movement from these markets. And to Trunk Line and New England Territories one-factor through rates apply which reflect the combination made up of the rate to the gateway plus

the proportional rate beyond. The varying proportional rates to Official Territory had been fixed with reference to the origin of the shipments to provide gateway equalization.[17] Obviously any application of proportional rates to grain which had paid a substantially less than the rail rate into the gateway would, as shown, eventually force a breakdown of the through one-factor rates.

The inauguration of barge service from the Illinois corn-producing areas had introduced a new factor in the rate structure. Because of the broad language of tariffs, originally intended to apply only upon grain produced in and shipped from a described territory, the proportional rates from Chicago were made applicable to ex-barge corn which had been produced in a territory other than that described, while ex-rail corn produced in the same territory was, under another tariff, subject to a different scale of proportional rates.

Speaking of the grain rate structure, this Court has said in *Board of Trade* v. *United States, supra* (p. 548):

> That the Commission itself was of a divided mind in the successive stages of this controversy emphasizes that the problem (grain-rate structure) is enmeshed in difficult judgments of economic and transportation policy. Neither rule of thumb, nor formula, nor general principles provide a ready answer. We certainly have neither

[17] See *supra*, p. 9.

> technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker with so sensitive an organism as the rate structure, only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive rate break adjustment was designed to reverse—evils which, for all we know, would be far more serious than those complained of by the appellants.

The above case was cited with approval in *Northern Pac. Ry. Co.* v. *United States*, 316 U. S. 346, 349.

The problem before the Commission was what the effect would be of striking down the proposed tariffs. The Commission had before it evidence that there were presently effective all-rail proportional rates from various river points served by barge to destinations in Official Territory. (R. Ex. 5.) These rates had been prescribed by the Commission.[18] Permitting ex-barge grain to use the proportional rates resulted in the local domestic rate on grain from all points in Central Territory west of a line from Bay City, Mich., southwardly through Fort Wayne, and Indianapolis being higher than the combination barge-rail rate via Chicago from Illinois river points to Baltimore, Md., New York, N. Y., and Boston, Mass. Again, the local export rate on grain

[18] *Supra*, p. 33.

from all points in Central Territory west of a line running southwardly and south along the Indiana-Ohio line were higher than the barge-rail combinations from Illinois river points to the same eastern ports. And the local export rail rates on corn from all points in Central Territory west of a line between Paynesville and East Liverpool, Ohio, were higher than the barge-rail combination from the same river points to the same eastern ports. This is graphically illustrated by Exhibit 6. Thus there are many origin points in Indiana and Illinois from which all-rail service to the East is shorter than the all-rail service from Chicago yet for this shorter all-rail service the charge is higher than the sum of the barge rate to Chicago and the proportional rate to destination. (R. Ex. 61.) The effect of this disparity in rates was to attract to the waterways corn which would normally move all-rail to the east because the combination of the truck charge to the river station, barge rate to Chicago and the proportional rate east would be less than the all-rail rate (R. 258). Yet the transportation mileage would be substantially greater (R., Ex. 67). Clearly, as the Commission found, this disparity was leading to a disruption in the prescribed level of rates in Official Territory since it created a situation prejudicial to producers of corn in this area who could not avail themselves of barge transportation.

But the court below sidesteps these considerations by finding that the break-down of the rail rate structure referred to by the Commission related to the publication by the western lines of intrastate rail rates to Chicago below the normal basis of interstate rates (R. 1674). From the foregoing it is quite evident that the Commission was concerned with the grain rate structure within Official Territory and not only the barge competitive rate to Chicago. For thirty-five years rates on grain and related articles from country origins in Illinois to Trunk Line destinations have reflected the combination of proportional rates over Chicago. *Grain Rates in Central Freight Ass'n Territory*, 28 I. C. C. 232. The key rate or basis of the grain structure was the Chicago-New York rate. It was this rate structure that was being threatened and not only the Illinois rates.

In *Youngstown Co.* v. *United States*, *supra*, an order of the Commission prescribed minimum rates on ex-river coal from points on the Ohio River to destinations in northern Ohio. It found rates lower than the minima fixed would create discrimination against shippers in origin districts who could not use the water-rail route, and would tend to disrupt the rate structure and destroy proper differential between various producing districts. In sustaining the validity of this order, this Court held:

The appellant's principal complaint is that the Commission raised the permissible minimum rate to prevent disruption of the existing rate structure and relationship of rates for carriage from various producing regions to Ohio destinations, and that an order grounded upon any such consideration is unauthorized and violates the principle announced in *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499. The position is not well taken. This record exhibits a situation quite distinct from that disclosed in the cited case. In the first place the Commission here found the required minimum reasonable; in the second place it had after full investigation in this and the Ohio case held the existing rate structure—built upon certain reasonable key or controlling rates by application of proper differentials—just and reasonable, and the ex-river rates here in issue, in contrast, too low.

V

In sustaining the lawfulness of the suspended tariffs the Commission did not offend against the national transportation policy

In administering the provisions of its organic law the Commission has always recognized the desirability of preserving competition not only between like transportation agencies but also between the different modes of transportation. As early as 1920 water transportation was recognized as having a definite place in the national trans-

portation system when Congress declared (Transportation Act, 1920, sec. 500; 41 Stat. 499, 49 U. S. C. 142):

> It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

In *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 288, this Court said with respect to this policy:

> The admonition does not mean that carriers by rail shall be required to maintain a rate that is too high for fear that through the change they may cut into the profits of carriers by water. The most that it can mean, unless, conceivably, in circumstances of wanton or malicious injury, is that where carriers by land and water are brought within the range of the regulatory powers of the Commission, as, e. g., in establishing through routes or joint rates, there shall be impartial recognition and promotion of the interests of all.

It thus appears that the mere fact that a water carrier's situation in the transportation field might have been worsened by the rates or practices of a competing railroad did not, *per se*, bring about a violation of the congressional policy. The soundness of this construction also found support

in authority given the Commission by the Inland Waterways Corporation Act, Sec. 3 (a), to differentiate between all-rail and water-rail transportation in prescribing all-rail rates and joint rail-water rates, and in the provisions of section 6 (13) (c), now 6 (11) (b), empowering the Commission to prescribe proportional rates by rail to and from the port and to determine upon what traffic and upon what terms and conditions such proportional rates should apply.

Again in administering the provisions of the Motor Carrier Act of 1935, and the congressional policy there declared, the Commission said in *Naval Stores from Mississippi to Gulf Ports*, 235 I. C. C. 723, 733:

> Healthy competition between different agencies of transportation is undoubtedly in the public interest. Ordinarily, either may initiate rates that will, in the opinion of its management, enable it to obtain or retain desired traffic provided that such rates are compensatory.

The National Transportation Policy enacted by the Transportation Act of 1940 declares the policy of Congress to be "to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; * * * to encourage the establishment and maintenance of reasonable charges for transportation service, without unjust

discrimination, undue preferences or advantages, or unfair or destructive competitive practices * * *" for the purpose of "developing, coordinating and preserving a national transportation system by water, highway and rail * * * adequate to meet the needs of the commerce of the United States, etc."

Certainly there is nothing in the language of this policy alone that requires appellant railroads, to their own detriment, to accord barge traffic the same rates that they do to the traffic of other railroads. But appellees seem to argue that the inclusion of connecting common carriers by water in the prohibition of section 3 (4) has given them a preferred position.

Section 3 (4) was amended to include common carriers by water within the prohibition against discrimination between connecting lines. However, this change must be read in conjunction with Section 3 (1) which was likewise amended by the Transportation Act of 1940. The principal change was that the prohibition against undue or unreasonable preference or undue or unreasonable prejudice was made subject to a *proviso* reading:

> *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

This specific expression of legislative policy of preserving competition between different kinds of transportation agencies was further emphasized in the change in the rule of rate making embodied in Section 15 (a) (2) where the Commission in exercising its power to prescribe reasonable rates was enjoined to "give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed." As to the phrase quoted, the Commission in *Seatrain Lines, Inc.* v. *A. C. & Y. Ry. Co.*, 243 I. C. C. 199, 214, said:

> The words which have been italicized for emphasis are of particular interest. They were not in either of the bills originally passed by the Senate and House of Representatives but were added by the committee of conference. Their meaning, supported also by the legislative history, seems to be that no carrier should be required to maintain rates which would be unreasonable, judged by other standards, for the purpose of protecting the traffic of a competitor.

A corresponding provision was enacted into Part III which by Section 305 (c) prohibits undue or unreasonable preference or advantage excepting, however, "discrimination, prejudice or disadvantage to the traffic of any other carrier of whatever description," and that "differences in the classifications, rates, fares, charges, rules, regu-

lations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation, shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provisions of this act."

The Commission in sustaining the lawfulness of the proposed rates properly looked beyond the competitive position of the appellee barge line and found that the public interest lay in the denial of the use of the existing proportional rates to the ex-barge traffic. In so doing it exercised the broad discretion which has been vested in a body versed in the intricacies of the transportation field. Compare *Scandrett* v. *United States*, 32 F. Sup. 995, affirmed 312 U. S. 661.

VI

The Commission's conclusion that the proposed rates will not discriminate unjustly against the traffic of appellee barge lines in favor of the traffic of the lake lines, being based upon a finding supported by substantial evidence of the existence of differentiating circumstances and conditions, may not be disturbed

The appellee barge lines have contended that under section 3 (4) the denial of proportional rates out-bound upon their traffic unlawfully discriminates against them in favor of the lake lines whose grain is accorded those proportional rates.

Prior to the Transportation Act of 1920, this Court held that discrimination in rates and charges

between connecting railroads forbidden by section 3 (4) of the Act to Regulate Commerce is a question of administrative fact and is of the same quality as discrimination and undue prejudice against persons and localities. *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 361. Consistently since then the Commission has held that equality of treatment under this subsection must be determined by similarity of circumstances and conditions. *Quanah, A. & P. Ry. Co.* v. *Atchison, T. & S. F. Ry. Co.*, 211 I. C. C. 389, 391; *Atlantic C. L. R. Co.* v. *Cape Fear Rys., Inc.*, 218 I. C. C. 152, 157; *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 20; compare *Kentucky & I. Bridge Co.* v. *Louisville & N. R. Co.*, 37 F. 567, appeal dismissed, 149 U. S. 777.

The inclusion of common carriers by water within the definition of connecting line cannot change the Commission's function or undermine the finality of its administrative finding.

The Commission met the issue raised under section 3 (4). It found that the two kinds of traffic were essentially different; that the lake traffic was predominantly wheat from the Northwest as opposed to corn from Illinois (R. 18–355, 383); that "the in-bound haul in connection with the traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffice" (R. 53); that "the rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail com-

binations and do not contravene fourth-section principles or jeopardize the all-rail rate structure" (R. 53). These were factors properly considered by it in determining that section 3 (4) was not violated by the application of the local rates to the ex-barge traffic.

VII

The Commission fully performed its duties in this proceeding

A. The Commission properly took into consideration the changes made in the Interstate Commerce Act by the Transportation Act of 1940

Prior to the issuance of the original report the grain brought into Chicago by barge was over lines of contract carrier barges, the one exception being the Federal Barge Line as to which the Commission found (R. 18–359):

> Admittedly the Federal Barge Line is a common carrier, but this line has hauled little if any grain to Chicago from origins on the Illinois Waterways here considered. No evidence was presented as to the common-carrier status of other [than the ones specifically alluded to] independent barge lines hauling grain to Chicago over the Illinois Waterways.

None of these barge rates was then on file with the Commission.

Between the close of hearing and the date of the first report the Transportation Act of 1940 became effective. Water carriers were made subject to Commission regulation, the transportation

policy was rewritten, and other changes in the Act were made. Particularly, section 3 (3) was made section 3 (4) and amended to read:

> (4) All carriers [engaged in the transportation of passengers or property] subject to the provisions of this part, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, *and connecting lines,* and for the receiving, *and* forwarding, and delivering of passengers or property to and from [their several lines and those connecting therewith,] *connecting lines*; *and* shall not discriminate in their rates, fares, and charges between [such] connecting lines, or unduly prejudice any [such] connecting line in the distribution of traffic that is not specifically routed by the shipper. *As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III.*[19]

Both the petition of Inland Waterways Corporation for rehearing and reconsideration (R. 28) and the special appearance of Mechling Barge Line seeking rehearing and reconsideration (R. 101) were predicated upon the amendment to section 3 (4). But neither of these petitions sought further hearing save to adduce the additional fact that they had become common carriers by water

[19] Brackets indicate deletions; italics indicate additions.

under part III and had conformed to the requirements of those provisions of the Act. Their pleas were the asserted legal consequences arising out of the amendment to the Act based upon the record as then constituted. Nor did the barge lines in their petitions ask for a reopening of the proceeding to permit them to make a record upon which the Commission could exercise its power under section 6 (11) (b), namely to prescribe proportional rates applicable to the traffic in question, notwithstanding that the Commission had stated that "the record does not contain sufficient information to warrant prescribing proportional rates on traffic arriving at the rate-break points in common carrier boats" (R. 18–359). Consequently the Commission dealt with the new issues that the Transportation Act of 1940 had injected into the case upon a record which all parties deemed adequate for that purpose.

Dealing with the petitions for reconsideration the Commission stated (R. 49):

> The only protestant seeking a further hearing is the Federal Barge Lines, which points out that since the hearing it and certain other barge lines have filed their port-to-port grain rates with us, but this is a fact of which we can take official notice. Certain of the parties ask for reargument. Under the circumstances, we think that no useful purpose would be served by further hearing or reargument and that the matter can

> properly be disposed of in this report with a view to determining what, if any, modification or clarification of the division's findings should be made on reconsideration of the record in the light of the petitions and replies and our prior decisions.

We submit that the finding of the Court below (R. 1675) that the Commission took no evidence addressed to the issue whether the rate proposal was in violation of section 3 (4) or contrary to the national transportation policy, and passed upon that issue upon evidence taken without reference to such issue, is without significance as a basis for setting aside the Commission's order.

B. The Commission was not required to exercise its powers under section 6 (11) (b) in this proceeding

The origin of this proceeding was the filing with the Commission of certain tariffs, the effect of which was to withdraw the use of existing proportional rates on grain which had arrived at the proportional-rate points by barge line and make such grain subject to the use of certain existing local rates. Following representations to it by the Federal Barge Lines and certain grain elevator companies, the Commission exercised the power conferred upon it by section 15 (7)[20] of the Interstate Commerce Act and suspended the tariffs and entered upon an investigation of the lawfulness of the proposed rate application. Un-

[20] See Appendix, *infra*, p. 65.

der the provisions of this section the burden of proof rested upon the railroad carriers to show that "the proposed changed rate * * * is just and reasonable." The issue was then clear-cut. It was the lawfulness of the proposed rates, not of some other or lower rates which might be applied to this particular traffic.

In proceedings under section 15 (7) the Commission had held that it is given the duty to determine the "lawfulness" of the rate but the duty of specifying in what respect and to what extent the new rate will be lawful or unlawful is not laid upon it although it "may" make an order which would be proper in a proceeding pending upon complaint. *Salt from Louisiana Mines to Chicago*, 69 I. C. C. 312; *Livestock to Eastern Destinations*, 156 I. C. C. 498. As indicated in these decisions the Commission is required to determine the lawfulness of the proposed rates and it may but is not required to consider and fix some other or different rates in lieu of the ones proposed. *Akron, C. & Y. Ry. Co.* v. *United States*, 22 F. (2d) 199.

In the instant case the Commission did not arbitrarily refuse to exercise its jurisdiction under section 6 (11) (b) as urged by appellees. This subsection, as before stated, empowers the Commission to establish proportional rail rates on traffic which has been brought to the port or is carried from the port by a common carrier by water. On

the contrary the Commission in the first report stated (R. 18–359):

> Under section 6 (13) (c) (now section 6 (11) (b)) of the act, we have jurisdiction to prescribe proportional rail rates on traffic which has been hauled to a port or is carried from a port by a common carrier by water. This record is replete with complexities and technicalities, and does not contain sufficient information to warrant prescribing proportional rates on traffic arriving at the rate-break points in common carrier boats.

The Commission's report on reconsideration answered the same contentions by holding that it might in a proper proceeding prescribe proportional rates on the ex-barge traffic lower than the combination (R. 54).

Certainly the refusal of the Commission in this proceeding to undertake to fix proportional rates out of the rate-break points applicable to ex-barge grain cannot be said to be so arbitrary as to justify setting aside the order. On the other hand to have undertaken this task upon a record which the Commission itself deemed insufficient would have amounted to arbitrary action.

As has been said the burden was upon the rail carriers to show that the application of the local rates to the ex-barge traffic would not violate any of the provisions of the Act. The Commission found that they had satisfied that burden. It was not incumbent upon them to go further.

This the Commission pointed out in *Freight Rates from Minnesota Points*, 32 I. C. C. 361, 367:

> The respondents have dealt only with the issue presented, and to the extent the evidence is sufficient to justify their claim the presumption should be indulged that any unjust discriminations that may result from the proposed rates in connection with matters not regularly before us will be removed by them. If the carriers should not deal fairly with shippers in this respect, the matter may be brought to our attention by formal complaint, with all interested carriers made parties, to the end that full and complete justice may be done.

CONCLUSION

In conclusion, it may be observed that the substance of this case amounts to an effort on appellees' part to have the court prescribe as rules of law matters relating to transportation problems and policy which have heretofore been recognized as within the peculiar and exclusive province of the Commission. This finds proof in the startling and unusual conclusion of the court below "that the order of the Interstate Commerce Commission discriminates against water competition by users of barge lines." Whatever may be the precise meaning of this cryptic conclusion, it is at least clear that in finding the existence of discrimination, whether in the order of the Commission or in the local rates as applied to the traffic

in question, the court below has trespassed beyond its province. So far as its findings of fact are concerned, which it is to be assumed bear some relation to the conclusion which it reached, it is equally clear that the court below has weighed the evidence and arrived at conclusions of fact contrary to those reached by the Commission upon the same evidence. Here again it overstepped its function.

We submit that the order of the Commission in this case was supported by adequate findings of fact upon substantial evidence; that its determination of the lawfulness of the tariffs under sections 1, 2, and 3 of the Interstate Commerce Act were matters within its administrative field and having made no other errors of law, the order must be sustained and the judgment of the court below reversed and case remanded with direction to dismiss the complaints.

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DECEMBER 1942.

APPENDIX

Interstate Commerce Act, 49 U. S. C.:

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

SEC. 1 (5) (a). All charges made for any service rendered or to be rendered in the

transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carriers shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this

paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

SEC. 3 (4). All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

SEC. 6 (11) (a). To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation

of such tracks, determine what sum shall be paid to or by either carrier: *Provided*, That construction required by the Commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this part.

(b) To establish proportional rates, or maximum, or minimum or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

SEC. 15 (7). Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the deci-

sion thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interstate carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this

amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

SEC. 15a (2). In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

PART III, SEC. 305 (c). It shall be unlawful for any common carrier by water to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic in any respect whatsoever; or to subject any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any

other carrier of whatever description. Differences in the classifications, rate, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provision of this Act.

(d) All common carriers by water shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this subsection the term "connecting line" means the connecting line of any common carrier by water or any common carrier subject to part I.

SEC. 307 (d). The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and carriers by railroad, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges

as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and common carriers by water. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of section 15.

U. S. GOVERNMENT PRINTING OFFICE: 1943

IN THE

Supreme Court of the United States

October Term, 1942

No. 175

INTERSTATE COMMERCE COMMISSION et al.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF ON BEHALF OF APPELLANTS,

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY AND THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

TO BRIEF OF APPELLEES, INLAND WATERWAYS CORPORATION et al.

LEO P. DAY,
Solicitor for The New York Central Railroad Company.

WILLIS T. PIERSON,
Solicitor for Erie Railroad Company.

EDWARD A. KAIER,
Solicitor for The Pennsylvania Railroad Company.

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LAWRENCE CHAFFEE,
Solicitors for The Chesapeake and Ohio Railway Company, and The New York, Chicago and St. Louis Railroad Company.

FRANK H. COLE, JR.,
Solicitor for The Baltimore and Ohio Railroad Company.

January 7, 1943.

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TO BRIEF OF APPELLEES, INLAND WATERWAYS CORPORATION et al.

REASONS FOR PROPOSED TARIFF CHANGE

Appellees state (Page 7) that the eastern lines made the proposed change in the hope that the inbound movement of grain to Chicago would be driven off the barges onto the rails. It was shown that the eastern railroads had much mileage in Illinois, and that the competition of the waterways was being felt more and more east of the Indiana-Illinois State line, (R. 265). It was shown that the present application of the proportional rates resulted in a total through charge on barge-rail traffic from the barge points of origin in Illinois to destinations in the East, lower than the rail charge from Chicago on local business and lower, in fact, than the rail charge from a wide area in Indiana to the same eastern destinations (see Exhibit 5, R.E. 35, explained R. 216, introduced R. 220, and Exhibit 6, R.E. 37, explained R. 217, introduced R. 220). Action was necessary to prevent further reductions and ever spreading disturbance of the rate level in and east of the barge origin area (R. 265, 266). The price paid to the producers along the waterway is the Chicago price less the cost of getting it to Chicago (R. 820, 822). The proposal will not change the cost of transportation by water from Illinois origins to Chicago. It was shown that the waterway would continue to handle the grain (R. 452, 486, 1111). Grain trucked to Chicago from this Illinois origin area has resulted in approximately the same price to the farmer as the barge grain (R. 656). The proportional rates do not now apply on truck arrivals from this Illinois origin area (R. 493). The Commission was justified in finding, as it did in 246 I.C.C. 353, 375, that if the application were to be continued it would disrupt the grain rate structure as far east as Painesville and East Liverpool, Ohio.

See, also, the conclusions of the Commission on reconsideration, 248 I.C.C. 307, 309, and 311, where it is stated, "The facts of record, as detailed by the Division and summarized herein, clearly show that respondents are justified under Section 1, in treating the ex-barge traffic the same as local or ex-

truck traffic and that the proposed schedules cannot be condemned as unlawful under Sections 2 and 3 of the Act."

Appellees state, Page 12, that the disturbance in the rail rate structure was limited entirely to the establishment of reduced rates *to Chicago*, as found by the District Court. This is in error as shown above and in our brief dated December 17, 1942 beginning at page 66.

Appellees at page 12 state that the proportional or reshipping rates would still apply in connection with the inbound intrastate rates, if the inbound charges were set up to the basis of the inbound interstate rates. There are two destination territories. The Ex-Northwest proportional rate would not apply on ex-rail grain from the Illinois origin area in any event, because such ex-rail grain would not meet with the terms of the note governing application of such proportional, since it would not originate in the Northwest (page 89 of our brief dated December 17, 1942). To destinations in the East, the application of the proportional rates is covered by the provisions of Note 20 (page 87 of our brief dated December 17, 1942). That note contains a provision that the rates will only apply:

> "On such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original point to final destination."

There is a full line of one-factor joint through commodity rail rates from this Illinois origin area to the East (Exhibit 13, R.E. 60, introduced R. 237). Such rail grain would have to pay for its through movement, the correct through tariff rate from origin to destination. *A. T. & S. F. Ry. Co. v. Robinson*, 233 U.S. 173, 181. *Southern Ry. v. Prescott*, 240 U.S. 632, and cases cited at 638. This Court has held that the shippers are not concerned with merely the divisions of such joint rates. *L. & N. R.R. v. Sloss-Sheffield Co.*, 269 U.S. 217, 234.

The Division in its decision, 246 I.C.C. 353, referred to this inbound movement from Illinois to Chicago on the intrastate rail rates (367), and stated in connection therewith at page 372: "The rate tariff publishing the inbound intrastate rates to Chicago specifically prohibits transit arrangements. Since the corn moving into Chicago on intrastate rates is not available for transit, Chicago is its final destination. It follows that the local rate beyond Chicago applies in the absence of a tariff provision preserving the fictional through movement." No modification of this finding was made by the Commission in later decision 248, I. C. C. 307.

HISTORY OF WORDING OF THE NOTES

Appellees state, in Note 12 on page 9, that changes in the wording of the tariffs were made in 1935 in order that the Northwest proportional would apply on boat arrival grain without specification of origin territory. It is shown in Exhibits 96, 98, and 99 (R.E. 136, et seq, introduced as a result of a request by counsel for Appellees, R. 1660, the Examiner ruling at R. 1661, that the material could be submitted fifteen days after the hearing), that the various roads made this change in the wording of the tariffs in 1932 (this being shown as to The Baltimore and Ohio at R. E. 138, The Pennsylvania at R.E. 142, Pere Marquette at R.E. 146, Erie at R.E. 148 and 157, Michigan Central at R. E. 149, Grand Trunk at R.E. 157, N.Y.C. & St. L. at R.E. 160, and Wabash at R.E. 161). It will be noted that by these changes in 1932 the note governing the ex-Northwest proportional was made to apply "on shipments which arrived by boatlines at Chicago, Illinois" and other named ports. Note 20, governing application of proportional rates to the East, has been effective in its present form since January 15, 1924 (R.E. 19, introduced R. 220). It is seen, therefore, that both the note governing the ex-Northwest proportional to Central territory and the note governing application of proportional rates to the east provided generally for application on shipments which arrive by boatlines or water transportation line prior to the opening of the Illinois waterways into Chicago, which occurred in 1933 (R298,690). It was

never intended that the proportional rates were to apply on this Illinois grain (R. 218, 274). The tariff applied because of its wording at the time the barge traffic began (R. 274, 257).

REASONABLENESS OF THE PROPOSAL.

Appellees contend, page 48, that the Commission did not treat with the reasonableness of the proposed rates east of Chicago in and of themselves, but erroneously considered the reasonableness of the proposal by comparisons of barge-rail total charges with all-rail combinations, citing *Interstate Commerce Commission* vs *Stickney*, 215 U.S. 98. The Commission did separately consider the reasonableness of the proposed ex-barge rates (248 I.C.C. 307, bottom 309). Therefore, to follow exactly the holding of this Court in *Interstate Commerce Commission* v. *Stickney, supra:* (p. 105 quoted by appellees).

> "If the terminal charge be, in and of itself, just and reasonable, it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes a total charge to the shipper unreasonable."

Appellees and others contended that the local rates east of Chicago, when applied to the ex-barge grain, would present the unreasonableness of the total charge, so that the Commission further considered the reasonableness of the rates in connection with the inbound barge charge. Whether it is necessary and proper to consider simply the local rate east of Chicago, or whether it is necessary and proper to consider the through charges barge-rail, becomes unimportant, therefore, because the Commission considered both features.

As stated by Appellees at page 51, it is true that this Court in *A. T. & S. F. Ry. Co.* v *U.S.*, 279 U.S. 768, held that the Commission's power is such that they may treat with the reasonableness and propriety of a proportional rate as such. We do not understand that any question is raised on that point. Our problem is not connected with the authority of the Com-

mission to treat with a proportional rate as such. Rather we are concerned with what problems the Commission necessarily has before it in treating with a proportional rate from point B to point C which concededly is but a factor of a through rate from point A to point C through B differing from those problems which may exist when the Commission is considering another proportional between B and C applicable to traffic from X, and differing also from the problems which may exist when the Commission may be considering the rating of local traffic between B and C. While the Commission may pass upon the validity of a proportional rate in a case considering the proportional rate alone, the problems with which the Commission is necessarily concerned in arriving at the propriety of such proportional cannot disregard the fact that it is a part of a through rate. In *A. T. & S. F. Ry. Co.* v. *U.S.*, 279 U.S. 768, the Supreme Court recognized that a through rate is ordinarily lower than a combination of the local rates (p. 771), and that when the through rate was made by a combination, the rate for the later link was spoken of as a "proportional rate" (p. 771), and that on the outbound movement from the proportional-rate point the grain "goes forward on a new bill of lading at the balance of the through rate" (p. 779). This Court, therefore, recognized in the cited case that the proportional lower than the local represented the balance of the through rate. Unless the Commission did, in fixing the proportional consider its relation to the through charges, it would be impossible to use the proportional to make up the balance of any through rate.

SECTION 2 OF THE INTERSTATE COMMERCE ACT

Appellees, at page 54, cite *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I.C.C. 384. That case was decided in 1915, prior to the amendment of Section 3 (1) made in 1940. (This section is carried in our brief of December 17, 1942 at page 96). Further, it is shown in that case that the traffic, whether ex-barge or ex-rail, came from the same origin, which distinguishes it from our present case. See also *Ex-River Grain*

from St. Louis to the South, 203 I.C.C. 385. The case of *Raw Sugar, New Orleans to Gramercy and Reserve, La.*, 206 I.C.C. 231, cited by appellees, turned upon questions which are not involved in our present case, and is not in point.

Appellees refer to additional Commission decisions which are not in point: in *Bascom Co.* v. *A. T. & S. F. Ry. Co.*, 17 I.C.C. 354, the Commission condemned a proportional rate proposed by a carrier with a restriction limiting its application only to traffic which that carrier brought into the proportional rate point. While condemning a proportional rate as thus limited, the Commission recognized the propriety of proportional rates applicable only to through movements from a defined territory. *Rosenbaum Bros.* v. *L. & N. R. R. Co.*, 22 I.C.C. 62, 66, is to the same effect. *Birkett Mills* v. *D. L. & W. R. R. Co.*, 123 I.C.C. 63, involved a proposed difference in a transit charge for the same service connected with that transit stop. That is not applicable to our problem. *Ex-River Grain from St. Louis to the South*, 203 I.C.C. 385, must be considered in connection with *Ex-River Grain and Products to Mississippi Valley*, 177 I.C.C. 206. The case of *Restriction of Proportional Rates*, 161 I.C.C. 113, turned wholly on an interpretation of Section 3 in 1930 long prior to the amendments of that section made in 1940. It should be noted that the traffic there considered came from the same origin territory. None of these cases cited by appellees holds that the Commission, in fixing a proportional rate, is limited to a consideration only of the transportation factors connected with the movement under the proportional rate alone. Every one of the cases shows that the rate in issue was condemned only because, after consideration of the factors connected with the through movement, the Commission found that there were no distinguishing features connected with the transportation which would distinguish the service under the rate in issue from some other complained of service.

Appellees contend, at page 56, that the decision of this Court in *Texas & P. Ry. Co.* v. *I.C.C.*, 162 U.S. 197, was overruled

by *Interstate Commerce Commission* v. *Alabama M. R. Co.*, 168 U.S. 144. The reading of the several decisions shows separate problems, not an overruling of the first decision. In fact, the case of *Texas & P. Ry. Co.* v. *I.C.C. supra*, has been cited with approval by this Court in many later cases. See *L. & N. R. Co.* v. *Behlmer*, 175 U.S. 648; *East Tenn. V. & G. R. Co.* v. *I.C.C.*, 181 U.S. 1; *I.C.C.* v. *C. G. W. R. Co.*, 209 U.S. 108; *Texas & P. Ry. Co.* v. *U.S.*, 289 U.S. 627, 636. In *Wright* v. *U.S.*, 167 U. S. 512, cited by appellees at page 57, the court considered a movement of beer from Cincinnati to Pittsburgh for each of several dealers at Pittsburgh. The beer, in each instance, originated at Cincinnati and moved to the same rail delivery point at Pittsburgh. For the same service, one dealer paid 11.5 cents and the other paid 15 cents. The court, at page 518, stated:

> "For this case, it is enough to hold that that phrase as found in Section 2 (under substantially similar circumstances and conditions), refers to the matter of carriage, and does not include competition."

The carrier in that case attempted to justify the difference in charge for the same service on the ground that one dealer could take delivery free, if the goods were shipped via Pennsylvania Railroad; whereas, the other dealer could not get free delivery via either railroad, and that this competition warranted the competing railroad making the lower rate to the dealer who could get free delivery if his shipment moved via the Pennsylvania. However, both shipments thereafter moved via B. & O., and the service was strictly from Cincinnati as an origin, to Pittsburgh, the destination, for which a different charge was made based upon this nature of competition. As shown, this *Wright Case* was considering all of the transportation involved, and it was shown that the charge varied for the same total carriage. Our problem requires us to consider whether *the service* is the same. There is nothing in the *Wright Case* to indicate in the slightest that the charge, from Chicago to Columbus for example, must be the same on

grain originating in Chicago as on grain originating in Northwest Territory moving through Chicago to Columbus. Before the *Wright Case* can become applicable here, it must first be found that the services under these various movements are the same.

In *Interstate Commerce Commission* v. *D. L. & W. R. Co.*, 220 U.S. 235, and in *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U.S. 326, cited by appellees, it was held by this Court that a difference in ownership of property could not be relied upon as justification for a difference in rates, the Court finding (225 U.S. 326, 343):

> "But such features do not affect the carriage, qualify or alter the essential service, which is to get an article from one place to another."

These features as to ownership were said by the Court to be "extraneous to the transportation." However, this Court has also said that a through rate is ordinarily lower than the combination of local rates and that the later link in the rates, when they are made on a combination basis, is spoken of as a proportional, and that when the grain goes forward from the rate-break point, it does so at the balance of the through rate. *A. T. & S. F. Ry. Co.* v. *U.S.*, 279 U.S. 768. Through rates are concededly lower than the local rates to a transit point plus the local rate beyond the transit point. *Central R. R. Co.* v. *U. S.*, 257 U.S. 247, 255. Factors connected with the origination of the grain, the amount of movement it may have had up to the point where the proportional rate is to be picked up, the amount of charges which has already been incurred before that proportional rate is added, cannot be considered "extraneous to the transportation", since it is absolutely necessary to consider those features in order to determine what is the service, and hence what relationship, if any, the proportional rate should have to the through charge.

Appellees state (page 63) that the carriers' proposals are not made dependent upon a difference in the origins from

whence the inbound traffic moves. The ex-barge grain is now using the ex-Northwest proportional to destinations in Central territory. The note governing the use of the ex-Northwest proportional rates (Note 40, pages 89 and 90 of our brief, December 17, 1942), specifically provides that the rates are effective on grain originating in Northwest territory and applies only to grain from the Northwest territory with the single exception providing that the rates would apply "on shipments which arrive by boatlines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis." Since ex-lake grain comes in from the Northwest (R. 1205 1206, 1312), the ex-barge grain is the only Illinois originated grain which, today, is securing the use of the ex-Northwest proportional from Chicago to Central territory destinations. With the approval of our proposed change eliminating ex-barge grain from the terms of this note governing the ex-Northwest proportional from Chicago to Central territory, a situation will be created under which the ex-Northwest proportional rates will only be used on grain from the Northwest. The present note governing application of the proportional rates to the east (Note 20, page 87 of our brief dated December 17, 1942), provides that the rates are applicable on grain reaching the reshipping point via rail or water transportation line. It is further provided that the rates will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original point to final destination. Rail grain originating in Illinois and moving through to the East is covered by one-factor joint through rates (see Exhibit 13, R.E. 60, introduced R. 237; R. 875). The note does not make the rates applicable on trucked-in grain. With the elimination of the ex-barge arrivals, the proportional rates will only be applicable to ex-lake shipments (coming from the Northwest, supra), or to rail arrivals coming from origin territory from which no joint through commodity rates are in effect. There are no such joint rates in effect from the West to

the East (R. 218). Thus it is shown that with the proposed changes made effective, the various origin areas will be carefully provided for and there will be reestablished that separate treatment which was disrupted by the inception of the barge arrivals in Chicago.

SECTION 3 (4) OF THE INTERSTATE COMMERCE ACT

Appellees contend (p. 67) that prior to the amendments made by the Transportation Act of 1940, only those water carriers were subject to the jurisdiction of the Commission who were engaged in the transportation of property partly by railroad and partly by water, when both were used under a common arrangement for continuous carriage or shipment under Section 1 of the Act. That this is in error is shown by *C. R. I & P. Ry. Co.* v. *U.S.*, 274 U.S. 29, 34 et seq., where this Court carefully considered the extent of the jurisdiction of the Commission over land and water transportation, holding that the obvious intention of Congress, as evidenced by the then effective provisions, would be substantially limited in effect if it were to be held that only joint operation under Section 1 was said to be subject to the jurisdiction of the Commission.

The amendment of 1940 added to Section 3 (4) (carried in our brief December 17, 1942 at page 97):

> "As used in this paragraph, the term 'connecting line' means the *connecting line of* any carrier subject to the provisions of this part or any common carrier by water subject to Part 3." (Emphasis supplied).

Any carrier, to come under the provisions of this section, must be shown to be a "connecting line."

The case of *Augusta S. R. Co.* v. *Wrightsville & T. R. Co.*, 74 Fed. 522, cited by appellees, shows that there was an arrangement for a through route even though there may have been no physical connection between the lines. Physical connection is not necessary. See *Chicago, I. & L. Ry. Co.* v. *U.S.*,

270 U.S. 287, at 293. But there must be a through route in order to constitute "connecting lines" (see our brief dated December 17, 1942, page 55). In *Virginian Ry. Co. v. U.S.*, 272 U.S. 658 at 666, cited by appellees, this Court specifically found "through routes to the West were already in existence." For *this* reason, it was therein found to be unnecessary to prescribe through routes.

SECTION 3 (1) of the INTERSTATE COMMERCE ACT

Appellants do not contend as suggested by Appellees (p. 79) that the proviso added to Section 3 (1) should be read into the provisions of Section 3 (4) of the Interstate Commerce Act. The two sections are separate and distinct, and in our brief of December 17, 1942, we treat with those provisions as separate and distinct.

A REASONABLE RATE MIGHT STILL RESULT IN DISCRIMINATION

Appellants have not, as indicated by appellees, at p. 80, suggested that a rate reasonable in itself might not be discriminatory. All that we have contended for here is that the change has been considered by the Commission and approved both as to its reasonableness and as to its lawfulness under Sections 2 and 3 of the Interstate Commerce Act. Appellants have also further pointed to the fact that whether from the facts, disputed or undisputed, in a given case, preference or prejudice does exist, is a question for the Commission. *U. S. v. L & N. R. R. Co.*, 235 U.S. 314, 320; *Western Paper Makers' Chemical Co. v. U.S.*, 271 U.S. 268, 271; *Board of Trade of Kansas City v. U.S.*, 314 U.S. 534, 546.

SECTION 6 (11) (b) of the INTERSTATE COMMERCE ACT

Appellees at page 81 contend that this section evidences an intention to authorize rates on ex-river traffic wholly apart from any considerations as to a through route. Section 6 (13)

(prior to its amendment, by which the number was changed to Section 6 (11), see pages 98, 99 and 100 of our brief of December 17, 1942) conferred power on the Commission to establish through routes and either joint rates between the rail and water lines, or proportional rates via the rail line to and from the port to which *the* traffic is brought, or from which it is taken by the water carrier, the Commission further being given the power to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. The extent of jurisdiction possessed by the Commission after the inclusion of this Section 6 (13) into the Act, was carefully considered by the Interstate Commerce Commission in *Procedure under Barge Line Act*, 148 I.C.C. 129, and at the top of page 134 it is stated:

> "But no such requirement may be made without prior full hearing, except that if we declare an emergency to exist, we may establish temporary through routes without notice or hearing."

See also *C.R.I. & P. Ry. Co. v. U.S.*, 274 U.S. 29. It will be seen that there is nothing in this section to indicate any intent to authorize proportional rates apart from the existence of a through route—quite the opposite.

Appellees at page 82 suggest that the 26-cent proportional rate from Chicago to New York, as presently in effect, is a proportional of the character defined by Section 6 (11) (b). Section 6 (11) (b) defines the proportional rates there considered as:

> "By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

This 26-cent proportional rate from Chicago to New York is applicable to ex-rail grain from Trans-Mississippi River territory and from the Northwest, and it is applicable to lake arrival grain irrespective of whether the vessel bringing it in

is a common, contract or tramp steamer. Therefore, that proportional rate could not be considered to be the nature of proportional rate covered by Section 6 (11) (b).

THE RATE STRUCTURE

Appellees, page 93, suggest that the report of the entire Commission did not rest upon a finding that the order was required to prevent disruption of the all-rail rate structure. In the report of the entire Commission, 248 I.C.C. 307 at page 309, the Commission summarized the findings of the Division, in which summary it is stated that the division found that the present application "results in a breakdown of the all-rail grain rate structure from adjacent origins in Illinois and Indiana." At page 311, the Commission stated:

> "The facts of record, as detailed by the Division and summarized herein, clearly show that respondents are justified, etc."

SECTION 4 OF THE INTERSTATE COMMERCE ACT

Appellees contend, p. 95, that Section 4 (1) (carried in appellees' brief at p. 106) of the Interstate Commerce Act does not provide a rational basis for the Commission's order. The Commission discussed this contravention of the Fourth Section rule in its decision, 248 I.C.C. 307, at 310. Appellees state that if the 26-cent proportional east from Chicago is satisfactory, for example to the Pennsylvania Railroad, the disparity between the proportional rate from Chicago to the East on the one hand, and the higher local rates from intermediate origins to the East on the other, is entirely appropriate under every section of the Act. However, such disparity is appropriate under the Act only because the proportional rate was part and parcel of a through rate covering through transportation. In *Parsons* v. *Chicago & Northwestern Ry.*, 167 U.S. 447, it was held by this Court that a local rate for a shorter distance may be higher than a proportional rate for a longer distance over the same line or route. To constitute a violation of Section 4, the through charge, of which the

proportional is a part, must be shown to be less than the local rate.

The Commission did consider this Fourth Section principle in connection with the through barge-rail charges and the Commission found further that these barge-rail combinations are below the level of the local rates from the reshipping points (248 I.C.C. 307, 310). While the amendments to Section 4 referred to by appellees provided (54 Stat. 904, Section 6 (b):

> "In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section. In the case of a carrier not heretofore subject to the provisions of such paragraph, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed, by reason of the provisions of such paragraph, as amended by subsection (a) of this section, prior to six months after the enactment of this Act, or in case application for the continuance of any such existing rate, fare, or charge is filed with the Interstate Commerce Commission within such six months' period, until the Commission has acted upon such application."

The through barge-rail charge was found by the Commission to violate the Fourth Section principle (248 I.C.C. 307, 310). Only the through charge could violate that rule. *Parsons* v. *Chicago & Northwestern Ry.*, 167 U.S. 447. It was not the rail proportional by itself, as contended by appellees, which involved any violation of that principle. *Parsons* v. *Chicago & Northwestern Ry., supra.* Therefore, the Commission's action was proper when, in December of 1941, it made the above finding in connection with the through barge-rail charges in relation to this Fourth Section principle.

The Commission also considered the ex-lake grain rates, finding that rail-lake-rail rates from the Northwest did not contravene the Fourth Section principle or jeopardize the all-rail rate structure (248 I.C.C. 307, 310). Exhibit 75 (R.E. 123, introduced R. 1394) shows the ex-lake charges from Duluth through Chicago to New York, this total being 32.75 cents or 1.75 cents under the local rate east of Chicago. However, it was testified that this grain from Duluth has had a transportation service up to Duluth (R. 279, 1067, 1069).

CONCLUSION

The order of the Interstate Commerce Commission meets the test to which it should have been subjected. The order was within the jurisdiction of the Commission, was made after a full hearing, was based upon essential findings supported by substantial evidence, and was free from any error in the application of law.

It is respectfully submitted that the decree of the District Court should be reversed and the cause remanded with directions to dismiss the bills of complaint.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 175

INTERSTATE COMMERCE COMMISSION, ET AL.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.,
Appellees.

REPLY BRIEF FOR THE ALTON RAILROAD COMPANY AND OTHER WESTERN CARRIERS, APPELLANTS.

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January 8, 1943.

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Appellees.

REPLY BRIEF FOR THE ALTON RAILROAD COMPANY AND OTHER WESTERN CARRIERS, APPELLANTS.

This brief is in reply to the brief for Inland Waterways Corporation, Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation and Continental Grain Company, appellees.

The Assailed Order of the Interstate Commerce Commission Is Not Judicially Reviewable Under the Urgent Deficiencies Act.

Appellees Inland Waterways Corporation *et al.* take issue with our contention that the challenged order of the Commission is not a final administrative order. At page 38 of their brief they say:

"There is no reason why they [appellees] should be

compelled to begin another proceeding if the Commission should have acted in this case so as to prevent action by the eastern railroads which would be in derogation of their statutory rights."

In *United States* v. *Merchants Assn.*, 242 U. S. 178, a case directly in point here, a similar argument was unavailing. In that case this Court had before it an amended order entered, after extended hearings, by the Interstate Commerce Commission in *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C. 611, 34 I. C. C. 13. The order granted transcontinental carriers relief from the long-and-short-haul clause of Section 4 of the Interstate Commerce Act, and authorized them to establish, in accordance with limitations prescribed in the order, rates from eastern shipping points to ports on the Pacific coast lower than the rates established to interior coast cities. Many shippers had participated in the hearings before the Commission. Representatives of four interior cities, alleging that they had appeared in whole or in part at these hearings, applied to the Commission for a rehearing. When their application was denied they, joined by others, brought suit to enjoin the enforcement of the amended order and the tariffs filed pursuant thereto. In holding that they had failed to exhaust their administrative remedies this Court, in an opinion by Mr. Justice Brandeis, said at page 188:

> "The carrier is the only necessary party to the proceeding under § 4. The Commission represents the public. While it is proper and customary for communities or shippers interested to participate in hearings held, there is no provision for notice to them. They are not bound by the order entered; at least in the absence of such participation. And if the rates made by tariffs filed under the authority granted seem to them unreasonable, or unjustly discriminatory, §§ 13 and 15 afford ample remedy. Respondents contend that, after the amended order was entered and the tariffs filed, they did apply to the Commission for relief 'but were denied the right of a hearing' and that

> 'their protest and demand were ignored and denied.' What they did was to petition for a 'rehearing' in the proceedings under the Fourth Section, to which they now say they were not parties, instead of applying for redress under § 13, as they had a legal right to do. They mistook their remedy. To permit communities or shippers to seek redress for such grievances in the courts would invade and often nullify the administrative authority vested in the Commission; and, as this case illustrates, the attempt of the court to remove some alleged unjust discriminations might result in creating infinitely more."

The decision in *United States* v. *Merchants Assn., supra*, is directly applicable here. In an investigation and suspension proceeding under Section 15(7) the carrier proposing a change in rates is the only necessary party. The Commission is the representative of the public. While it is customary to permit interested persons to be heard in such proceedings, the Act makes no provision for notice to them. If such persons participate in the hearings they may be bound by the order entered, but the order does no more than remove a barrier erected by the Commission (instead of by the Act, as in proceedings under Section 4) to the establishment of new rates. The order does not constitute a final administrative determination of the lawfulness of any rates any more than action by the Commission in refusing to suspend in the first instance constitutes such a final administrative determination. Any expressions in the report of the Commission which might indicate that it believes the proposed rates would be lawful have no binding effect in any subsequent proceeding. *Tagg Bros.* v. *United States*, 280 U. S. 420, 445. Appellees in the present case mistook their remedy. That remedy is a formal complaint under Sections 13 and 15, and, if such a complaint were filed, the Commission would be bound to entertain it. *Baird* v. *Interstate Commerce Commission*, 194 U. S. 25, 39.

To permit appellees to seek redress in the courts from an order discontinuing an investigation and suspension proceeding "would invade and often nullify the administrative authority vested in the Commission" to determine whether or not a carrier should be permitted to initiate new rate policies. The remark of this Court in *United States* v. *Merchants Assn.*, *supra*, that "the attempt of the court to remove some alleged unjust discriminations might result in creating infinitely more" is particularly pertinent here; for the attempt of the court below to remove some supposed discriminations has actually resulted in continuing in effect a manifestly unreasonable and discriminatory rate structure. *Cf. Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 548.

The order of the Commission in the case at bar presents an even stronger case for the application of the doctrine that the administrative remedy must be exhausted before the courts may take jurisdiction than the order of the Commission in *United States* v. *Merchants Assn.*, *supra*. The order in that case expressly conferred upon the carriers authority to establish rates which they could not have established without the order. The order in the present case does not command or authorize the establishment of any rates. It merely vacated the suspension order "as of December 22, 1941" (R. 77), and the eastern lines were legally free to place the tariffs in effect on December 23rd if they had elected so to do. Their right to place the tariffs in effect was given by the statute, and not by the order of the Commission. *Diamond Tank Transport* v. *United States*, 23 F. Supp. 497, 501 (D. C. W. D. Wash.).

Appellees contend (Br. 34) that the assailed order was entered by the Commission "pursuant to the power conferred upon it by the Section 15(1) of the Act to determine and fix reasonable, nondiscriminatory, and nonprejudicial rates for common carriers by railroad." Section 15(1) of the Act, as its context clearly shows, relates

to existing rates, and authorizes the Commission, if it finds that any such rate is or will be unlawful, to determine and prescribe the rate to be thereafter observed. The proceeding before the Commission in which the assailed order was entered was had under Section 15(7), which relates to proposed rates. These proposed rates never became effective because the Eastern Lines voluntarily postponed the operation of the tariffs beyond the statutory seven-month period pending the determination of the proceeding. (R. 18—246 I. C. C. 353, 354.)

It is true, as counsel for appellees say (Br. 37), that Section 15(7) provides that "the Commission *may* make such order with reference thereto [*i. e.*, the suspended rate] as would be proper in a proceeding initiated after it had become effective." This language must be read in the light of the issue before the Commission in the investigation and suspension proceeding, which, by the terms of Section 15(7), is "a hearing concerning the lawfulness of such [proposed] rate." The general practice of the Commission, when it finds a proposed schedule will not be lawful, but is of the opinion that the carrier is entitled to make some change in its rates, rules or regulations, is to order the suspended schedule canceled without prejudice to the filing of a new schedule in conformity with the findings and suggestions contained in its report. See, *e. g.*, *Petroleum from South Atlantic Ports to Southeast*, 245 I. C. C. 23; *Agricultural Implements Within the South*, 245 I. C. C. 153; *Lumber from North Carolina to New York*, 245 I. C. C. 231; *Estimated Weights on Fruits and Vegetables*, 245 I. C. C. 479; *Office Supplies from Gloucester, Mass. to Chicago*, 245 I. C. C. 669. Cf. *United States* v. *Atlanta, B. & C. R. Co.*, 282 U. S. 522, 527-8. If in the course of the hearing in an investigation and suspension proceeding it appears that a large rate structure is unjustly discriminatory, and that the rates proposed by the carrier would remove part of the discrimination, the Com-

mission may properly vacate its suspension order and permit the proposed rates to take effect; for the carrier should not be prevented from placing the proposed new rates in operation merely because the entire maladjustment, which is not in issue in the investigation and suspension proceeding, would not be cured unless other new rates were also established.

Counsel for appellees argue (Br. 37) that the word "may" should be read as "shall." The Commission after careful consideration of this very question in *Salt from Louisiana Mines to Chicago*, 69 I. C. C. 312, held that it has no duty to fix and determine new rates in an investigation and suspension proceeding when it finds that the proposed rates would not be lawful. In that case the Commission said at page 313:

> "The duty of specifying in what respect and to what extent the new rate will be lawful or unlawful is not laid upon us, although we 'may' make any order which would be proper in a proceeding pending upon complaint.
>
> "That it was not the intention of Congress to require us in every suspension proceeding to specify what rates would be lawful in lieu of the new rate proposed, as, for example, in the case before us, to all destinations over a stretch of main line approximating 850 miles in length, clearly appears from other provisions of section 15. These limit the suspension period to 150 days [now 7 months], fix 30 days as the minimum time within which our orders shall take effect, and expressly require that 'the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible'."

After pointing out that its power to suspend extended to the operation of any schedule, the Commission, at pages 313 and 314, further declared:

> "Plainly our statutory duty does not vary with the number or nature of the items in the suspended sched-

> ules. If respondents' contention is sound we can be called upon to readjust the entire rate structure of an important section of the country during the slender margin of time which remains after the hearing on the schedules under suspension. Such an interpretation would nullify the evident purpose of the statute that we expedite decision in these cases. During the year ended October 31, 1921, 207 proceedings, including that here considered, were instituted upon our investigation and suspension docket.
>
> "Our power of suspension has existed since 1910. It has been exercised in over 1,500 cases. Many deal with hundreds of rates, some with thousands, and one with more than a million. Many involve rate structures built upon adjustments of great complexity. In the majority of these cases we have found that the rates, charges, or other tariff provisions under suspension had, or had not, been justified. Our practice in this regard, which accords with our interpretation of section 15 of the act, has been uniform during all of this time, and the Congress has not seen fit specifically to require us to do what respondents here suggest as our duty. In the several amendments made since 1910, and particularly when re-enacting paragraph (7) of section 15 in 1920, the Congress has manifested no inclination to impose such a duty upon us."

The situation is not, as appellees assert (Br. 34), precisely the same as if the proposed rates had become effective and the Commission had dismissed a formal complaint by appellees attacking those rates. In an investigation and suspension proceeding under Section 15(7) the Commission determines whether it should or should not interfere with the right of a carrier to initiate a new rate. At common law carriers had the right to initiate rates, and this primary right has not been taken from them by the Interstate Commerce Act. *Arizona Grocery Co.* v. *Atchison Ry. Co.*, 284 U. S. 370, 384; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 522; *Interstate Commerce Commission* v. *L. & N. R. Co.*, 227 U. S. 88, 92. The Commission is given

power to hold a proposed change in rates in abeyance for a temporary period only, and the statute provides that if the proceeding is not concluded within the period of suspension "the proposed change of rate • • • shall go into effect at the end of such period."

The power to determine whether proposed rates should be suspended for investigation, as this Court has said, "was entrusted to the Commission only." *Board* v. *Great Northern Ry. Co.*, 281 U. S. 412, 429. If the Commission decides to undertake an inquiry into the lawfulness of the proposed rates, and, after hearing, concludes, as it did here (R. 55), that "the proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful," and then discontinues the proceeding (R. 77), it does no more than to say that it sees no good reason why it should further interfere with the right of the carrier to initiate new rates. It does not make any final administrative determination that the new rates are just, reasonable and nondiscriminatory, or prescribe any rate. Appellees concede (Br. 35-6), as they must, in view of *Board* v. *Great Northern Ry. Co.*, *supra*, that the administrative determination as to whether or not it will suspend a proposed tariff in the first instance is within the sole discretion of the Commission. The character of the Commission's action in lifting a suspension is essentially no different from its action in determining in the first instance whether or not it should suspend.

It is suggested by appellees (Br. 36) that there is an important difference between the initial and subsequent determinations in that the former is made without hearing and the latter after hearing. The justiciability of an order of the Commission, however, is not dependent upon whether or not it was entered after a hearing. Many orders entered after hearing have been held not judicially reviewable. *Delaware & Hudson Co.* v. *United States*, 266 U. S. 438; *United States* v. *Los Angeles R. R.*, 273 U. S.

299; *Piedmont & Northern Ry. Co.* v. *United States*, 280 U. S. 469; *United States* v. *Atlanta, B. & C. R. Co.*, 282 U. S. 522; *United States* v. *Griffin*, 303 U. S. 226; *Shannahan* v. *United States*, 303 U. S. 596. Thus, even if it were true, as appellees assert, that the Commission committed error after hearing in the proceeding in which the assailed order was entered, the fact remains, as was said in *United States* v. *Los Angeles R. R.*, *supra*, at page 313:

> "There is the fundamental infirmity that the mere existence of error in the final valuation [referred to in the statute as an order] is not a wrong for which Congress provides a remedy under the Urgent Deficiencies Act."

It is suggested (Br. 35) that the prosecution of a formal complaint before the Commission would be a futile undertaking "since it must be assumed that in any new proceeding the Commission would construe the statute precisely as it has done in this proceeding and would arrive at the same ultimate conclusions." In *United States* v. *Felt & Tarrant Co.*, 283 U. S. 269, 272-3, it was held that a taxpayer could not recover taxes, alleged to have been illegally exacted, without first complying with the statutory requirement that he file a claim for refund with the Commissioner of Internal Revenue, notwithstanding the fact he had good reason to anticipate that the claim would be rejected because like claims had consistently been disallowed by the Treasury. The rule that the administrative remedy must be exhausted applies even though the statute does not make exhaustion of that remedy a condition precedent to the right to resort to the courts. *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 50-1; *United States* v. *Sing Tuck*, 194 U. S. 161, 167, 170. As is well stated in *Vom Baur on Federal Administrative Law*, at Sec. 227:

> "It is a rule of substance that the legislative process must be completed before judicial relief is sought, and any specific complaint of an administrative nature must first be addressed to and carried through such

> legislative machinery as is available. The fact that some sort of administrative determination has been made obviously places no barriers across related legislative pathways which remain untrodden."

It is by no means certain, however, that the filing of a formal complaint would be a futile gesture. In the present investigation and suspension proceeding the issues were narrowly confined by Section 15(7) of the Act, and also by the terms of the order of investigation (R. 16), to the lawfulness of the proposed tariffs. As the Commission itself stated, "in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations." (R. 54, 55.)

In the present case the Commission lifted a previous suspension. The enforcement, in such a proceeding, of the rule of judicial administration "that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted" (*Myers* v. *Bethlehem Corporation*, 303 U. S. 41, 50) would cause no greater inconvenience to shippers than the action of the Commission when refusing to suspend in the first instance.

The doctrine of *Arizona Grocery Co.* v. *Atchison Ry. Co.*, 284 U. S. 370, that the Commission in a complaint proceeding cannot retroactively condemn as excessive a rate which it previously prescribed has no application in cases of unjust discrimination, and does not apply in cases where a rate is found unreasonable if the Commission, in a prior case, has done nothing more than vacate a suspension order. *Kansas City Ice Co.* v. *Atchison Ry. Co.*, 215 I. C. C. 616, 619. Any injury which the shippers might sustain pending the hearing and determination of their formal complaint is no ground for circumventing the rule requiring exhaustion of the administrative remedy before applica-

tion may be made to the courts. *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 50-2.

To permit resort to the courts for review of an order of the Commission which does nothing more than lift a suspension, when the complainant at that time has not exhausted his administrative remedy, would work undue hardship on the carrier. The carrier has convinced the Commission, after hearing, that it should vacate its suspension order and thereby remove the Commission-erected barrier to the effort of the carrier to try out its proposed new experiment in rates, subject to the risk that they might in a subsequent proceeding be found unlawful and damages be awarded. If judicial review of action by the Commission in lifting a suspension is permitted at such a stage in the prescribed administrative procedure, proposed rates, the effective date of which has already been delayed because of the suspension proceeding, could, as is the case here, be further delayed indefinitely in contravention of the statute, which provides specifically that, unless permanently suspended, the effective date may not be delayed for a longer period than seven months.

The Undue and Unreasonable Discriminations and Preferences Which Are Created When the Rail Proportional Rate From Chicago Is Permitted to Apply in Combination With an Inbound Barge Rate to Make a Through Barge-Rail Charge.

Appellees argue at length about some discrimination which, under their construction of the statute, they say will arise if, in accordance with the judgment of the Commission, the suspended schedules should be permitted to take effect. The same argument was presented to the Commission, but the Commission had before it positive evidence of wholly inexcusable discriminations and preferences in favor of appellees which are inherent in the

present rate structure, which are manifestly unfair and without reason, which exist because a rail proportional rate is allowed to apply in connection with a barge rate to make a through barge-rail charge, and which will be eliminated if the Commission has its way.

(a) *Barge-rail shipments*—Morris, Illinois, a point west of Chicago on the Illinois River, is some 60 miles more distant from New York than is Chicago. Upon arrival in Chicago, barge grain is unloaded into storage elevators. The rail service performed in transporting a local shipment from Chicago to New York is identical in all respects with the rail service performed in the transportation of a barge-rail shipment from Morris to New York.

The rail rate to New York on a local shipment from Chicago is 34½ cents. To New York from Morris the combined barge and rail charge on a barge-rail shipment is 28.75 cents, or 5.75 cents less than the Chicago rate. This offends against fairness and reason. Assuming the barge rate from Chicago to Morris is no greater than the barge rate from Morris to Chicago, a Chicago shipper, rather than to consign a shipment from Chicago direct to New York by rail, would have a lesser total transportation charge to pay if the shipment first moved from Chicago to Morris by barge and thence was transported as a barge-rail shipment from Morris through Chicago to New York.

It is no answer to say that local shipments out of Chicago are rare. To New York and to other eastern destinations the local rates from Chicago are in line with the local rates from origin points both west and east of Chicago. From the west to the east the rail rates are graded down as the distance and the service decrease

For example, to New York from Fort Wayne, Indiana, the rate is 30 cents, 4½ cents less than the rate from Chicago. By permitting the Chicago proportional rate to apply in combination with the barge rate, the through barge-

rail charge from Morris becomes, as stated, 28.75 cents. A barge-rail shipment pays 28.75 cents for transportation from Morris through Chicago and through Fort Wayne to New York, while a similar shipment to New York from Fort Wayne pays 30 cents. The barge-rail shipment might well be in the freight train which picks up the Fort Wayne shipment.

The Commission referred to the charges on barge-rail shipments in comparison with the rates from rail stations intermediate between origins and destinations on the barge-rail routes. (Report of the Commission, Division 2, 246 I. C. C. 353, 374—R. 18; Report of the Commission on Reconsideration, 248 I. C. C. 307, 310—R. 52.) At page 310 of the Report on Reconsideration the Commission said:

> "To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but 6 per cent. To this territory, the barge-line combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule." (R. 52-3.)

In the Report by Division 2 it is stated that the combination of the barge rates to Chicago and the rail proportionals beyond results in lower through charges on domestic shipments than the local rail rates to the same destinations from all intermediate stations between Chicago and a north and south line through Fort Wayne and other points bordering on the Ohio-Indiana state line. (Page 374—R. 18.)

The Commission stated (Report on Reconsideration, 248 I. C. C. 307, 311—R. 54) and this Court has recognized (*Bd. of Trade of Kansas City* v. *U. S.*, 314 U. S. 534, 539) that proportional rates from a market are, in essence, bal-

ances of through rail rates. Being the balance beyond the market of the through rate, the measure of a proportional rate necessarily depends upon and is related to the measure of the through rate and to the measure of the inbound rate. In such circumstance it seems absurd for appellees to say (Br. 48) that the reasonableness of a proportional rate must be tested independently of and without regard to either the through rate or the inbound rate, and to say (Br. 49) that, in testing the reasonableness of the rates beyond the market by the combinations they produce, the Commission exceeded its authority. Whatever the measure of the balance or proportional rate is, or whatever the measure of the inbound rate is, the statute requires that, when combined, the through rate must be reasonable and non-discriminatory. Whether the through rate is reasonable and non-discriminatory depends upon the measure of the proportional rate and of the inbound rate. The lawfulness of the through rate also depends upon the measure of other competitive rates. If this were not so equality of treatment, which the statute requires, would be impossible of accomplishment.

Furthermore, all of the through rates to the east on grain from points west of Chicago could have been prescribed or published in conformity with the requirements of the statute by stating them as joint one-factor rates* rather than as separately stated rates into Chicago and as separately stated balances or proportional rates beyond Chicago. Had that been done, there would be no occasion for the present controversy and no basis for the contention of appellees as to violations of Sections 2 and 3.

(b) *Truck shipments*—Grain raised on farms in the west, northwest and southwest to be sold ordinarily is

* In this connection it is stated at page 6 of our Brief dated December 16, 1942, that the 35½ cent rail rate to New York from Morris is not stated in the tariffs as a joint one-factor rate. This statement is in error. The rate from Morris and the rates from certain other points in Illinois are published as joint one-factor rates. (Ex. 13, p. 13—page 72 of Record of Exhibits.)

trucked to a country elevator at the nearest station. Whether the farm is 1 mile, 15 miles or 30 miles from the station, and irrespective of the distance trucked, the local rate from the station applies when the grain is transported by rail.

Only the grain firms in a position to provide facilities for handling grain at barge origin points can handle barge grain advantageously. After the barge movement began in 1933 or 1934, it became necessary for at least one of the larger grain companies to bring corn to Chicago by truck in order, so far as possible, to meet the new competition created by the barge movement. (R. 492, 498, 499.) This company will unload in one day as much as 15,000 to 30,000 bushels from trucks. (R. 494.) In 1939 it trucked about 4,000,000 bushels of corn to Chicago. (R. 493.) A good part of the corn which arrives in Chicago by truck comes from the same producing territory in which the barge corn is grown. (R. 493.) If grain moved to Chicago by truck is shipped to the east by rail, the local rate from Chicago applies just as the local rate from any country station applies when grain trucked to that station moves out by rail. In no other manner may the integrity of a rate adjustment be preserved; for every local shipment transported by rail has had some form of prior movement or some form of prior transportation before any rail service is performed. A commodity produced or manufactured on or in the vicinity of the station platform, or in the vicinity of industrial or team tracks, or at more distant points, requires movement or transportation to or into the car by hand, hand-truck, motor-truck or by some other method before rail transportation may begin.

The witness appearing for the grain firm which moves a substantial volume of corn into Chicago by truck stated that "if the reshipping rates are to continue to apply on barge grain it is our conviction that such reshipping rates should be applied also on truck grain." (R. 493.)

What is stated above presents but a few of the problems confronting the Commission when it decided to lift its previous suspension. We deny that the proposed tariffs will deprive appellees or anyone else of any right which they have under the statute. But whatever the situation may be in this respect, the Commission has weighed "the prospective gains and hurts," and decided that, at this stage of the administrative process, it should no longer delay the proposed change in rates. With this determination the courts should not interfere. *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 547-8; *United States* v. *Merchants Assn.*, 242 U. S. 178, 188.

Respectfully submitted,

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January 8, 1943.

No. 175

In the Supreme Court of the United States

OCTOBER TERM, 1942

INTERSTATE COMMERCE COMMISSION ET AL.,
APPELLANTS

v.

INLAND WATERWAYS CORPORATION ET AL.,
APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE SECRETARY OF AGRICULTURE OF THE UNITED STATES

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OPINION BELOW

The findings of fact and conclusions of law of the district court (R. 1663–76) are reported in 44 F. Supp. 368.

JURISDICTION

The decree of the district court was entered April 16, 1942 (R. 1677–78). Petition for appeal was filed on May 21, 1942 (R. 1679–80) and was allowed on the same day (R. 1691–92). The jurisdiction of this Court is conferred by 28 U. S.

C. 1940 ed., secs. 47, 47 (a), 345. Probable jurisdiction was noted on October 12, 1942 (R. 1738).

QUESTION PRESENTED

The principal question presented is whether an order of the Interstate Commerce Commission approving the cancellation of reshipping rates, and the application of the higher local rates, on the reshipment by rail from Chicago to eastern destinations of grain arriving in Chicago by water over the Illinois Waterways, and continuing such reshipping rates as to grain arriving in Chicago by rail or by lake, is in accordance with law.

The district court, in entering its decree enjoining the operation of the order of the Commission, declared the order to be unlawful for the reason that it "discriminates against water competition by the users of barges" on the Illinois Waterways (R. 1676).

THE STATUTES INVOLVED

I. GENERALLY

The case involves the application of certain provisions of the Interstate Commerce Act (Act of February 4, 1887, ch. 104, 24 Stat. 379), as amended from time to time (49 U. S. C. 1940 ed., secs. 1–923), relating to (1) the reasonableness of transportation rates, (2) discrimination in rates as between (a) shippers, (b) places, and (c) connecting carriers, and (3) the national transportation policy to preserve the inherent

advantages of water transportation. The provisions of the act which are immediately pertinent are set forth in an appendix hereto.

The provisions of the act relating to common carriers by rail, or by rail and water (49 U. S. C. 1940 ed., secs. 1–27), and to inland waterways transportation (*ibid.* 141–157), are contained in Part I of the act. The provisions of the act relating to common and contract carriers by water (*ibid.* secs. 901–923) are contained in Part III of the act. Part III was added by the Transportation Act of 1940, which became effective September 18, 1940, except as to certain sections thereof which became effective on January 1, 1941, with power vested in the Interstate Commerce Commission to postpone the date of the effectiveness of such sections not beyond April 1, 1942 (54 Stat. 952, 49 U. S. C. 1940 ed., notes to sec. 901). The Transportation Act of 1940 also effected amendments and additions, effective September 18, 1940, to the provisions of Part I of the act relating to common carriers by rail and rail and water (54 Stat. 899–919).

II. SUMMARY OF PROVISIONS OF THE ACT RELATING TO RATES OF, AND DISCRIMINATION BY, RAIL AND WATER CARRIERS

A. COMMON CARRIERS BY RAIL AND WATER

Rail and water carriers are required to furnish transportation upon reasonable request (49 U. S. C. 1940 ed., secs. 1 (4), 905 (a)). Water carriers

may operate only upon obtaining a certificate of public convenience and necessity (*ibid.* sec. 909 (a)). Rail and water carriers are required to establish through routes with other such carriers (*ibid.* secs. 1 (4), 905 (b)). Rail and water carriers are required to make reasonable individual rates (*ibid.* secs. 1 (5) (a), 905 (a)), and reasonable through rates (*ibid.* secs. 1 (4), 905 (b)). Certain water carriers are exempt from the provisions of the act (*ibid*, sec. 903 (b) (d)).

An unreasonable rate is unlawful (*ibid.* secs. 1 (5) (a), 905 (a)). It is unlawful for any carrier by rail unjustly to discriminate by charging one person more than another person for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" (*ibid.* sec. 2), or for a rail or water carrier to subject to undue prejudice any particular person (not including the traffic of any other carrier of whatever description) or any particular place (*ibid.* secs. 3 (1), 905 (c)). It will not constitute unjust discrimination for a water carrier to make rates different from those of a rail carrier (*ibid.* sec. 905 (c)). A rail carrier is not permitted to increase rates after reduction has been made therein to meet water competition unless the Commission finds that the proposed increase rests upon changed conditions other than the elimination of water competition (*ibid.* sec. 4 (2)). Rail and water carriers are required to afford reason-

able facilities for the interchange of traffic with, and not to make any rate discrimination between, the connecting lines of other rail or water carriers (*ibid.* secs. 3 (4), 905 (d)). Such carriers are required to file with the Interstate Commerce Commission schedules of their rates (*ibid.* sec. 6 (1), 906 (a)) and cannot engage in transportation without doing so (*ibid.* secs. 6 (7), 906 (d)). The rates so filed must be strictly observed (*ibid.* secs. 6 (7), 906 (*e*)). Rail and water carriers may not make a greater charge for a shorter than for a longer haul of like kind of property over the same line or route, except as authorized by the Commission (*ibid.* sec. 4 (1)).

The Commission is empowered to correct unlawful rates, with the burden of proof upon the carrier to show that any challenged proposed new rate or proposed practice affecting an established rate is reasonable (ibid. secs. 15 (1) (6) (7), 907 (b) (e) (g)), and to establish through routes and joint rates between rail carriers, water carriers, and rail and water carriers, with reasonable differentials as between rail and water transportation (*ibid.* secs. 15 (3), 907 (d)). The Commission is especially authorized to establish proportional rates by rail, differing from the corresponding local rates, as to traffic brought to or carried from ports by common carriers by water, and this authority was given the Commission before water carriers generally were made subject to the act (*ibid.* sec. 6 (11) (b)). In considering the rates of rail or

water carriers the Commission shall give consideration to the effect of the rates on movement of traffic by the carriers for which the rates are prescribed and to the need of adequate transportation (ibid. secs. 15a (2), 907 (f)).

B. CONTRACT CARRIERS BY WATER

In order to engage in transportation, contract carriers by water must obtain a permit from, and file reasonable minimum rates with, the Commission (*ibid.* secs. 906 (e), 909 (f)). The Commission is authorized to correct any unreasonable rate (*ibid.* sec. 907 (h) (i)). Certain contract carriers are exempt from the provisions of the act (*ibid.* sec. 903 (e) (e)).

III. THE NATIONAL TRANSPORTATION POLICY TO PROMOTE WATER TRANSPORTATION

A. THE TRANSPORTATION ACT OF 1940

The Congress, in enacting the Transportation Act of 1940 (54 Stat. 899, 49 U. S. C. 1940 ed., note preceding sec. 1), made a declaration of what is known as the "national transportation policy" and enjoined the Interstate Commerce Commission so to administer the provisions of the Interstate Commerce Act as to carry out this policy. The policy, in part, is to provide for a "fair and impartial regulation of all modes of transportation" so as to "preserve the inherent advantages of each * * * to the end of developing, coordinating,

and preserving a national transportation system by water, highway and rail * * * adequate to meet the needs of the commerce of the United States * * * and of the national defense."

B. INLAND WATERWAYS—INLAND WATERWAYS CORPORATION

The Congress had previously declared in the Transportation Act of 1920 (Act of February 28, 1920, ch. 91, sec. 500 *et seq.*, 41 Stat. 499; 49 U. S. C. 1940 ed., sec. 142), that it was its policy "to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." The latter declaration of policy was made in connection with the requirement that the Secretary of War conduct an investigation with the object of "promoting, encouraging, and developing inland water transportation facilities." The subject matter of the investigation was (1) appropriate types of boats, (2) interchange of traffic between water carriers and rail carriers, and (3) the extent of the utilization of inland waterways in transportation.

The Congress later created the Inland Waterways Corporation to operate on inland waterways the barges and other transportation facilities then owned by the United States and to improve the inland waterways transportation system by providing navigable channels and terminal facilities

for joint rail and water service. These operations are to continue until common-carrier service on the waterways becomes available (Act of June 3, 1924, ch. 243, sec. 1 *et seq.*, 43 Stat. 360, as amended, 45 Stat. 978, 48 Stat. 968, 49 Stat. 958, 53 Stat. 1434; 49 U. S. C. 1940 ed., secs. 141–157).

The Inland Waterways Corporation Act, as amended by the Act of May 29, 1928, ch. 891, sec. 3 (e) (45 Stat. 978, 980), provided for the issuance by the Commission, on application, of a certificate of public convenience and necessity to any common carrier by water on the Mississippi and other specified rivers, and directed the Commission, upon the issuance of such certificate, to order all connecting common carriers by rail to join with the water carrier in through routes and joint rates. The Commission was also directed, in issuing such an order, to fix reasonable minimum differentials between all-rail rates and joint rates in connection with the water service. Section 3 (e) of the Act of May 29, 1928, was repealed by section 320 (e) of the Transportation Act of 1940 (54 Stat. 898, 950), with the proviso, however, that any certificate of public convenience and necessity issued as aforesaid shall continue in effect as though issued under provisions of section 309 of the Interstate Commerce Act as amended (49 U. S. C. 1940 ed., sec. 909), and that the through routes and joint rates put into effect pursuant to

the provisions of said section 3 (e) shall be considered as having been put into effect pursuant to the provisions of the Interstate Commerce Act as amended.

C. THE PANAMA CANAL ACT

The Congress, long before making provision for an inland waterways transportation system and bringing water carriers under the provisions of the Interstate Commerce Act, manifested its interest in transportation by water in the enactment of the Panama Canal Act of August 24, 1912, ch. 390, sec. 11, 37 Stat. 560, 568. The act conferred upon the Interstate Commerce Commission a limited jurisdiction over transportation by rail and water through the Panama Canal, or otherwise, where such transportation is carried on by common carrier or carriers, (a) to establish physical connection between the lines of the rail carrier and the dock of the water carrier; (b) to establish through routes and maximum joint rates; and (c) to establish proportional rates by rail to and from the water ports. It declared that proportional rates meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to or carried from the port by a common carrier by water. The Commission was also authorized to require a rail carrier not to discriminate as between water carriers in arrangements for ship-

ments to foreign countries from the same port. The orders of the Commission pursuant to the act were required to be made only upon formal complaint or in proceedings instituted by the Commission. The act has been amended from time to time, and, as amended, is codified as part of the Interstate Commerce Act in 49 U. S. C. 1940 ed., sec. 5 (14) (15) (16); sec. 6 (11) (12), and sec. 51.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION INVOLVED

The order of the Interstate Commerce Commission involved in this case was issued December 1, 1941, in a proceeding entitled "Investigation and Suspension Docket No. 4718—Grain Proportionals, Ex-Barge to Official Territory." The order of the Commission, together with its report of findings, and the dissenting report of four of the Commissioners, including Chairman Eastman, is reported in 248 I. C. C. 307 (R. 47–76, 77). The Commission's order and report of findings were made upon reconsideration of the prior order and report of findings of Division 2 of the Commission, dated July 31, 1941, reported in 246 I. C. C. 353 (R. btn. 18–19). The Commission modified, in certain respects, the report of the findings of Division 2 and made the report a part of its order of December 1, 1941.

STATEMENT OF CASE

I. PROCEEDINGS BEFORE THE INTERSTATE COMMERCE COMMISSION [1]

A. GENERALLY

The proceedings before the Commission took place under sec. 15 (7) of the Act (49 U. S. C. 1940 ed., sec. 15 (7)) which authorizes the Commission, with or without complaint, to hold a hearing concerning the lawfulness of any proposal for a new rate or for a new practice affecting an existing rate, and to make an appropriate order in reference thereto. The Commission is also given a limited power of suspension of any schedule containing the proposed rate or practice. The burden is upon the carrier to show the reasonableness of the proposal.

In this case, rail carriers proposed, as to grain which is shipped into Chicago by water over the Illinois Waterways, the cancellation of the reshipping rates and the application of the existing higher local rates, on the reshipment of such grain by rail from Chicago to eastern destinations in central and trunk-line territories, and that such reshipping rates should continue in effect as to

[1] The report of the Commission by Division 2, as published in 246 I. C. C. 353, is frequently referred to herein. The facts set forth in the report are, with few exceptions, not in dispute. The report, as inserted in the Record between pages 18 and 19, is not page-numbered for the Record.

grain which is shipped into Chicago by lake or by rail.[2] Traffic on the Illinois Waterways is by barge. The in-bound traffic in grain to Chicago will be hereinafter referred to as ex-barge, ex-lake, or ex-rail traffic, as the case may be.

The new schedules were to become effective October 15, 1939 (R. 48). Upon the filing of protests, the Commission suspended operation of the schedules and instituted a hearing to determine the lawfulness thereof (R. 15–18). The suspension continued until May 15, 1940, on which date the suspension power of the Commission became exhausted. Thereafter, the carriers voluntarily suspended the tariffs pending the determination of the matter before the Commission (R. 48; 246 I. C. C. 353, 354).

B. THE PROPONENTS AND THE PROTESTANTS

The proposal to cancel the reshipping rail rates on the ex-barge grain was made by the Baltimore and Ohio Railroad Company and other eastern rail carriers by whom the rates are maintained. The Alton Railroad Company and other western rail carriers, competing with ex-barge grain,

[2] The proposal covers grain and grain products and by-products reshipped from Chicago and other related rate-break points to central, trunk-line, and New England territories (246 I. C. C. 353, 354, R. btn. 18–19). In this brief, reference will be made to grain only, which is the dominant commodity, and to the City of Chicago only, which is the dominant rate-break point, and all references herein to trunk-line territory are meant to include New England territory also.

appeared in support of the proposal. Appearances in support of the proposal were also made by others, including the Indianapolis Board of Trade and producers and handlers of grain which is shipped into Chicago by rail (R. 48, 209–213; 246 I. C. C. 353, 354, 357–358, 362–364).

The proposal was protested by many persons, including Cargill, Inc., and other grain merchants in Chicago, some of whom had invested large sums of money in connection with the handling of barge grain; the Finnegan Grain Corporation, a dealer in ex-barge grain, the Illinois Agricultural Association, the Mississippi Valley Association, and the Secretary of Agriculture of the United States. Many farmers whose grain is transported by barge also testified in opposition to the proposal (R. 48, 209–213; 246 I. C. C. 353, 355, 361).

The only barge line formally to protest in the hearing before the Examiner for the Commission was the Federal Barge Lines, which is operated by the Inland Waterways Corporation, pursuant to the provisions of Sections 141–157, Title 49, U. S. C. 1940 ed. (R. 210, 212, 1208–52; 246 I. C. C. 353, 354, 362, 376). This protestant is a common carrier by water, operating by barge on the Mississippi and Missouri Rivers and the Illinois Waterways from New Orleans, Louisiana, Kansas City, Missouri, and other points to Chicago, Illinois, serving intermediate points (R.

1209–10). The proprietor of the Mechling Barge Line, which line operates barges on the Illinois Waterways from points in Illinois to Chicago, appeared as a witness against the proposal (R. 908–91; 246 I. C. C. 353, 358). Whatever its status at the time of the hearing, this line has since been recognized by the Commission as a common carrier by water (R. 1721–24). The Transportation Act of 1940, subjecting water carriers to the jurisdiction of the Interstate Commerce Commission, was enacted during the course of the proceedings before the Commission. Each of these barge lines filed its barge rates with the Commission after the hearing but before the decision, on reconsideration, of the Commission sitting as a whole (R. 5, 95, 165, 1668).

C. THE INTERVENTION OF THE SECRETARY OF AGRICULTURE OF THE UNITED STATES

The Secretary of Agriculture of the United States became a party to the proceeding before the Commission (R. 48; 246 I. C. C. 353, 364) pursuant to Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1940 ed., sec. 1291, which provides that in any case before the Commission involving a complaint of a rate or practice relating to the transportation of farm products and affecting the public interest, the Commission shall make the Secretary a party to the proceeding, upon his application for that purpose, with all the rights of a party, including the right to invoke and pursue

original and appellate judicial proceedings involving the Commission's determination. The Secretary is also authorized by the same section of the Act to make to, and prosecute before, the Commission complaints in respect to rates and practices relating to the transportation of farm products.

D. THE RESPECTIVE CONTENTIONS OF THE PROPONENTS AND THE PROTESTANTS

1. *The contentions of the proponents.*—The carriers sought, before the Commission, to support the proposal to cancel the reshipping rates on ex-barge grain upon the grounds that such rates (1) result in loss of tonnage to the rail carriers, (2) disturb the grain-rate structure in the territory generally, and (3) result in discrimination against rail shippers of grain in the origin territory in Illinois. The western carriers also contended that the reshipping rates had never been properly applicable to the ex-barge grain (R. 214; 246 I. C. C. 353, 364–365).

The primary concern of the carriers is the loss of tonnage due to barge competition. The eastern carriers now have their share of the ex-barge grain reshipped from Chicago. It costs them no more to transport this grain than any other grain. The cancellation of the reshipping rates on the ex-barge grain would render it economically impossible to reship such grain by rail from Chicago. The eastern rail carriers would, therefore, lose the

ex-barge tonnage, except insofar as it may be regained by them through such an increase in volume of grain shipped into Chicago by the western rail carriers as is contemplated would result from the cancellation of reshipping rates on the competitive ex-barge traffic (R. 269, 281, 1068, 1073). It appears, therefore, that the concern over the loss of tonnage is principally that of the western rail carriers. The barge competition on the Illinois Waterways has cut severely into the tonnage of the western rail carriers from Illinois origins, and such carriers complain that their efforts to meet the barge competition by special intrastate rates on corn, the principal commodity transported by barge, has been nullified by the application of reshipping rates on the ex-barge grain (246 I. C. C. 353,364).

The interest of the eastern rail carriers plainly springs from the feeling on their part that all rail carriers should stand together in an effort to get as much business for the rails as they can. Their position in this respect, as affecting the instant case, is clearly stated by the only representative of the eastern carriers to testify. The testimony is to the effect that: "We are not in love with water transportation * * * and we believe that we are entitled to that grain business" (R. 281), and the purpose of the new schedules is to "drive this business off the water and back onto the rails where it belongs" (R. 266–267). As to ex-lake traffic, in respect to which the

reshipping rates would be continued, it is stated that this traffic on the whole affords the rails generally as long a haul as they would otherwise have (R. 1068).

Division 2 of the Commission sustained the contentions of the proponents (246 I. C. C. 353) and the Commission, sitting as a whole, sustained all contentions except the contention that the reshipping rates had never been properly applicable to the ex-barge grain (R. 51–52; 248 I. C. C. 307, 309).

2. *The contentions of the protestants.*—The protestants contended that the adoption of the proposal would contravene the national transportation policy to preserve the inherent advantages of water transportation (49 U. S. C. 1940 ed., note preceding sec. 1) and would also contravene the following sections of the Interstate Commerce Act relating to transportation rates and practices: section 1 (5) (a), making an unreasonable rate unlawful; section 2, making it unlawful to charge one person more than another for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions"; section 3 (1), making it unlawful unduly to prejudice any particular person or place; and section 3 (4), forbidding common carriers by rail from making any discrimination in their rates against the connecting lines of other common carriers, including carriers by water. It was also contended that the Commission should

give effect to section 6 (11) (b) of the act, as added by the Panama Canal Act of 1912 (49 U. S. C. 1940 ed., sec. 6 (11) (b)), relating to the authority of the Commission to establish proportional rail rates on ex-water traffic by common carriers.

The Commission approved the proposal over the contentions of the protestants, without, however, making any findings in respect to some of the contentions (246 I. C. C. 353; 248 I. C. C. 307).

E. THE FEDERAL IMPROVEMENT OF ILLINOIS WATERWAYS AND THE TRAFFIC IN GRAIN ON THE WATERWAYS

The Illinois Waterways, including a portion of the Illinois River, connect the Great Lakes with the Mississippi River, and provide at low cost transportation of grain, including grain sent to Chicago for reshipment. The Federal Government took over the project from the State of Illinois in 1930. The recent navigability of the waterways has been due entirely to extensive improvements made by the Federal Government. The waterways were reopened for navigation to Chicago in 1933. It is estimated that the total cost of the improvements made by the Federal Government has been at least $60,000,000 (246 I. C. C. 353, 354–355). Private persons, including some of the protestants, have invested large sums of money in elevator facilities, and in the operation of barges, to handle grain transported on the waterways (246 I. C. C. 353, 355).

The volume of movement of grain over the waterways has steadily increased since the barge lines began to operate in 1933, and competing railroads have suffered a loss of grain tonnage as a result of the barge competition. The waterways serve an important grain-producing area. The principal grains transported by barge over the waterways to Chicago are corn, wheat, oats, and soybeans. During the seven-year period, 1933–1939, 38,096,000 bushels of corn, wheat, oats, and soybeans were transported to Chicago over the waterways. The lake and rail receipts of these grains at Chicago during the same period amounted to 39,725,000 bushels and 812,743,000 bushels, respectively. The receipts of each commodity were as follows: *Corn,* by barge, 27,694,000 bushels, by lake, 23,170,000 bushels, and by rail, 465,210,000 bushels; *wheat,* by barge, 6,975,000 bushels, by lake, 13,160,000 bushels, and by rail, 155,140,000 bushels; *oats,* by barge, 1,871,000 bushels, by lake, 3,395,000 bushels, and by rail, 140,044,000 bushels; and *soybeans,* by barge, 1,556,000 bushels, by lake, none, and by rail, 52,349,000 bushels. The 1939 receipts were as follows: *Corn,* by barge, 13,206,000 bushels, by lake, none, and by rail, 65,774,000 bushels; *wheat,* by barge, 1,957,000 bushels, by lake, 211,000 bushels, and by rail, 24,132,000 bushels; *oats,* by barge, 837,000 bushels, by lake, none, and by rail, 20,987,000 bushels; and *soybeans,* by barge, 1,076,000 bushels, by lake,

none, and by rail, 18,486,000 bushels (R. Ex. No. 19, pp. 80–87, 90, 91, introduced R. 435; 246 I. C. C. 353, 383–384).

The Federal Barge Lines, during the same period, transported grain to Chicago over the waterways from Burlington, Iowa; Leavenworth, Kansas; Kansas City, Missouri; St. Louis, Missouri; and points in Illinois, including East St. Louis, Kampville, Morris, Lacon, Peoria, Pekin, and Havana, as follows: 4,657 tons in 1933; 45,772 tons in 1934; 32,367 tons in 1935; 35,220 tons in 1936; 52,900 tons in 1937; 5,843 tons in 1938; and 43,292 tons in 1939. In 1939, the tonnage consisted entirely of wheat from East St. Louis and Kampville, Illinois, and Kansas City, Missouri (Ex. 63, R. Ex. 101, introduced R. 1210, 1252).

Corn leads all other grains in receipts at the Chicago Market, and corn is also the principal commodity transported over the Illinois Waterways. Of the 17,076,000 bushels of grain moving to Chicago on the waterways in 1939, 13,206,000 bushels were corn (246 I. C. C. 353, 383–384).

The section of Illinois served by the waterways extends approximately forty miles from the waterways and comprises about twenty-one counties. It is part of a large surplus corn producing area. Most of the corn received in Chicago by rail and all that received over the waterways originates in this area (246 I. C. C. 353, 355). The total amount of ex-barge corn recorded for reshipment from Chicago in 1939 was 13,094,962.2 bushels of

which the Mechling Barge Line carried 7,278,146.1 bushels and the Allied Barge Corporation carried 4,358,224.1 bushels. The rest was carried by other independent barge lines (246 I. C. C. 353, 357).

F. RESHIPMENT OF GRAIN FROM CHICAGO

The reshipment of all grains from Chicago is by rail and by lake in almost equal volume, although corn moves out approximately two-thirds by lake and one-third by rail (Ex. 19, R. Ex. 93–96, introduced R. 435; 246 I. C. C. 353, 383–384). The reshipment by rail is exclusively at the reshipping rail rates (R. 1371, 1578), and grain which cannot engage such rates moves out via lake (R. 721, 1522–29, 1556, 1576–77). The movement by lake may only take place during the seven months of open lake navigation. Grain transported to Chicago by barge is largely reshipped therefrom via rail and via lake (246 I. C. C. 353, 357).

G. THE GENERAL NATURE OF THE RESHIPPING RATES

A major portion of the grain which moves from the West to Chicago is, after storage there, reshipped to eastern destinations. The movement into Chicago is (a) by rail, (b) by lake over the Great Lakes, (c) by barge over the Illinois Waterways, and (d) by truck (246 I. C. C. 353, 383–384). The ex-rail traffic is mostly by common carriers on rates filed with the Commission. The ex-lake and ex-barge traffic is by common, contract,

and private carriers on rates not filed with the Commission (R. 1275, 1290–1291; 246 I. C. C. 353, 357, 358, 359, 362), except as may have been recently required of common and contract carriers under the act as amended by the Transportation Act of 1940.

The barge rates on grain generally are less than the interstate competitive rail rates on grain (246 I. C. C. 353, 356–357) and the barge rates on corn are less than the intrastate competitive rail rates on corn (ibid.). The intrastate rail rates on corn were established for the purpose of meeting, insofar as possible, the barge rates, and the corn shipped under such rail rates is not entitled to transit privilege in Chicago except upon payment of the difference between the intrastate and the interstate rail rate (246 I. C. C. 353, 356, 367).

Grain moving in to Chicago from the West moves out of Chicago to eastern destinations by rail and by lake. For the rail movement, there are reshipping rates lower than the local rail rates on grain that originates in Chicago. To engage the reshipping rates, the reshipment need not be of the identical lot of in-bound grain. The local rates are rarely applied for the reason that very little grain originates in Chicago (246 I. C. C. 353). The reshipping rail rates are applicable to all types of in-bound movement, except truck movement, and it makes no difference that the in-bound movement may be by a water carrier—common, contract, or private—not subject to the

jurisdiction of, or on rates not filed with, the Commission, or without arrangements with the outbound rail carriers for through movement (R. 1054, 1275, 1284–1291; 248 I. C. C. 307, 309). The barge lines do not have any formal arrangements with the eastern rail carriers for through movement (R. 5, 985, 1052, 1225).

The reshipping area east of Chicago is divided into territories. For the purposes of this case, reference will be made to central territory and trunk-line territory.[2] Representative points in central territory are Indianapolis, Indiana; Detroit, Michigan; Circleville, Ohio; Pittsburgh, Pennsylvania; and Buffalo, New York; and representative points in trunk-line territory are New York, Philadelphia, Baltimore, and Boston (246 I. C. C. 353, 365). The reshipping rail rates vary, of course, according to the different destinations in the East, and, as to destinations in central territory but not in trunk-line territory, they vary also as to the territory of the origin of the grain west of Chicago (246 I. C. C. 353, 365).

The origin territories west of Chicago, referable only to reshipment from Chicago to central territory, are known as (a) Northwest Territory, (b) Trans-Mississippi River Territory, and (c) Reshipping Territory (Illinois-rail). Grain which is shipped to Chicago by boat over the Great Lakes and by barge over the Illinois Water-

[2] As used in this brief, trunk-line territory means also New England territory.

ways is regarded as originating in the Northwest Territory, which is expressly stated to include "shipments which arrive by Boat Lines at Chicago, Illinois * * *", while grain is shipped to Chicago by interstate rail from points along or adjacent to the Illinois Waterways is regarded as originating in the Reshipping Territory (246 I. C. C. 353, 365, 366).

There are, therefore, four sets of reshipping rail rates out of Chicago—one for eastern destinations in the trunk-line territory irrespective of the origin of the grain west of Chicago, and three for destinations in central territory, depending upon the origin of the grain west of Chicago. The set of reshipping rates for grain originating in the Northwest Territory is generally three cents higher, as an equalization factor, than the set of reshipping rates for grain originating in the Trans-Mississippi River Territory. The level of rates for grain originating in the Reshipping Territory is between the levels of rates applicable to grain originating in the other two territories. As stated above, the local rail rates eastward from Chicago on grain originating in Chicago are higher than the reshipping rail rates to the same eastern destinations[4] (246 I. C. C. 353, 365).

[4] Present and proposed tariff notes governing the engagement of reshipping rates are set forth in Exhibit No. 1 (U. Ex. pp. 1–28, introduced R. 220), and the reshipping

Rail movement, preceded or followed by water movement on rates not filed with the Commission, is frequently at reshipping; rates lower than the local rates irrespective of the type of water carrier as common, contract, or private (R. 1275–91).

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and local rates are set forth in Exhibit No. 68 (R. Ex. p. 104, introduced R. 1262). In this brief, reference will be made to the notes and rates as they are set forth in 246 I. C. C. 353 at pp. 365 and 385–388 (R. btn. 18–19). The notes are also set forth for convenient reference in the record at pp. 19–27. However, tariff notes relating to Trans-Mississippi River Territory are to be found only in Exhibit No. 1 at pp. 4–6 and 7–8.

(Table taken from 246 I. C. C. 353 at p. 365)

[Rates in cents per 100 pounds]

From Chicago, Ill., to—	Short-line distance	Separately published rate factors				Local
		Trans-Mississippi River	Northwest	Reshipping	Proportional	
		Note 30	Note 40	Note 45	Note 20	
CENTRAL TERRITORY						
	Miles	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Indianapolis, Ind	180.9	11.5	14.5	12		17
Detroit, Mich	299.5	12.5	15.5	13		17
Cadiz ville, Ohio	530.7	14.5	17.5	19		23
Pittsburgh, Pa	454	18.5	21.5	20		28.5
Buffalo, N. Y	498	18.5	21.5	30		28.5
TRUNK LINE TERRITORY						
Baltimore, Md	761		Domestic—23			31.5
Baltimore, Md	761		Export—16			24.5
Philadelphia, Pa	810		Domestic—24			32.5
Philadelphia, Pa	810		Export—16.5			25
New York, N. Y	900		Domestic—26			34.5
New York, N. Y	900		Export—17.5			27
Boston, Mass	972		Domestic—28			36.5
Boston, Mass	972		Export—17.5			28

II. THE RATE CHANGES WHICH WOULD BE MADE BY THE PROPOSAL AND THE EFFECT THEREOF ON THE VOLUME OF TRAFFIC IN SUCH GRAIN AND ON THE PRICES PAID TO PRODUCERS

The adoption of the proposal to cancel reshipping rail rates on the reshipment of ex-barge grain from Chicago would mean that the higher local rail rates from Chicago would become applicable to the reshipment of such grain by rail. It is not proposed to make any change in the inbound barge rates. The local rail rates from Chicago are higher than the reshipping rail rates therefrom by 8.5 cents to points in trunk-line territory, and by 1.5 cents to 7.5 cents to points in central territory, resulting, under the proposal, in a corresponding increase in barge-rail combination rates from points of origin to points of destination[1] (246 I. C. C. 353, 365, 366).

Grain comes to a common value at Chicago, both as to purchase price and as to selling price. The producer receives the Chicago price less the inbound transportation charge. The buyer from a Chicago merchant pays the Chicago price plus the cost of out-bound transportation. Transactions in grain are on a margin of one-quarter of a cent a bushel. Grain that cannot engage the reshipping rail rates is ineligible for transactions in grain futures. The amount by which local rail rates exceed the reshipping rail rates is such as would render reshipment at the local rates economically

[1] Rates are stated in cents per hundred pounds.

impossible,[6] and upon the adoption of the proposal the only outlet for ex-barge grain from Chicago would be via lake. There are many eastern destinations which cannot be reached by lake, and the movement by lake may only take place during the seven months of open lake navigation. The Chicago merchants, upon finding that the ex-barge grain cannot be handled with the same facility as ex-rail grain, would either cease to buy ex-barge grain, or buy the same only at a discount. The present ex-barge traffic in corn from Morris, Illinois, a representative barge point in Illinois, results in a net price to the producer of corn of 2.7 cents to 3.45 cents per bushel greater than if shipped into Chicago by rail at the interstate rail rate (R. 70–72, 721, 1522–29, 1556, 1576–77, 1635; 246 I. C. C. 353, 361, 365).

The in-bound barge rate of the Federal Barge Lines from Kansas City, Missouri, is 11.375 cents as contrasted with the competitive rail rate of 16 cents, and the in-bound barge rates of the independent barge lines,[7] including the Mechling

[6] The finding of the Commission that the proposal will not "prohibit movement by barge-rail" (R. 53) is hardly borne out by the record (R. 70–71, 1670–71).

[7] The report of Division 2 of the Commission (246 I. C. C. 353, 356–357) adopts as the barge rates of the independent barge lines the rates set forth at pp. 917 to 920 of the record and not the higher rates contained in several exhibits. Rates of the Federal Barge Lines are higher than the rates of the independent barge lines (Ex. 67, R. Ex. 102–103, introduced R. 1254; 246 I. C. C. 353, 363).

Barge Line, from points in Illinois, range from 3.30 cents to 5.125 cents as contrasted with the competitive interstate rail rates ranging from 9.5 cents to 12 cents.

The barge-rail rates to points in central and trunk-line territories, now less than the comparative all-rail rates, would, under the proposal, be higher than the all-rail rates as to points in trunk-line territory and generally lower than such rates but by reduced amounts, as to points in central territory. The present barge-rail rates are in some instances lower and in other instances higher than the local rail rates out of Chicago, while, under the proposal, they would in each instance be higher than the local rail rate by the amount of the in-bound barge rate.

The barge-rail rates under existing tariffs and under the proposed schedules may be compared with each other and with the all-rail rates and local rail rates out of Chicago by taking as examples grain transported by barge from Kansas City, Missouri, and Morris, Illinois, to Chicago, and then reshipped by rail to New York City. The present barge-rail rate from Kansas City to New York is 37.375 cents, consisting of the in-bound barge rate of 11.375 cents and the reshipping rate of 26 cents. The present combination rate is lower by 4.625 cents than the all-rail rate of 42 cents and higher by 2.875 cents than the local rail rate out of Chicago of 34.5 cents. The proposed barge-rail

rate is 45.875 cents, consisting of the in-bound barge rate of 11.375 cents and the local rail rate out of Chicago of 34.5 cents. The proposed combination rate is 8.5 cents higher than the present rate, 3.875 cents higher than the all-rail rate, and 11.375 cents higher than the local rate. The present barge-rail rate from Morris, Illinois, to New York, is 29.75 cents, consisting of the in-bound barge rate of 3.75 cents and the reshipping rate of 26 cents. The present combination rate is 5.75 cents lower than the all-rail rate of 35.5 cents and 4.75 cents lower than the local rail rate. The proposed combination rate is 38.25 cents, which is 8.50 cents higher than the present rate, 2.75 cents higher than the all-rail rate, and 3.75 cents higher than the local rate[*] (Exhibit No. 69, R. Ex. 107–117, introduced R. 1266, 1270–1271).

Under the proposal, the reshipping rail rates would continue in effect as to ex-lake and ex-rail grain. In some cases this would mean that the combination rate on ex-lake grain would continue to be less than the local rail rate from Chicago. For example, the in-bound rate on grain transported by

[*] The point of origin may be such as to make the present barge-rail rate equal to or greater than the local rate out of Chicago. This is particularly true as to the Federal Barge Lines which transports grain to Chicago from such distant points as Kansas City, Mo. Under the proposal, the barge-rail rate from any point of origin would be higher than the local rate from Chicago by the amount of the inbound barge rate.

lake from Duluth, Minnesota, to Chicago, Illinois, is 6.75 cents. The out-bound reshipping rail rate from Chicago to New York is 26 cents. The combined rate would be 32.75 cents, which is 1.75 cents lower than the local rate of 34.5 cents (R. 73, 1067; Ex. 75, R. Ex. 123, introduced R. 1283).

The present combinations of barge-rail rates from some points in Illinois are less than the rail rates from some of the rail origins in Illinois, Indiana, and Ohio, nearer to ultimate eastern destinations than is the ex-barge grain after arriving in Chicago (246 I. C. C. 353, 374; R. 215–219; Exs. 5 and 6, R. Ex. 35, 37, introduced R. 220),[9] and the present barge-rail rates are claimed to be such as to make it difficult for other markets, such as Indianapolis, to attract grain from the barge territory (246 I. C. C. 353, 364).

I. THE TARIFF CHANGES WHEREBY THE CANCELLATION OF RESHIPPING RATES ON EX-BARGE GRAIN IS TO BE MADE EFFECTIVE

The reshipping rail rates on the reshipment of grain from Chicago are now applicable to grain arriving in Chicago by barge, lake, or rail. The tariffs contain rules governing the application of the rates. It is proposed to make such changes in these rules as will cancel the reshipping rates as to the ex-barge traffic and continue the rates in

[9] The Commission held, as contended by the proponents, that this tended to break down the established through grain-rate structure from west to east (246 I. C. C. 353, 365, 374–375; 248 I. C. C. 307, 309).

effect as to the ex-lake and ex-rail traffic. This is to be done by specifically excluding all grain arriving in Chicago over the Illinois Waterways from the benefit of the reshipping rates (246 I. C. C. 353, 385–388). An exception is made as to packaged grain moving from Kansas City, Missouri, to Chicago, under rates published, prior to the hearing before the Commission, by the Federal Barge Lines (R. 1214, 1226, 1229; 246 I. C. C. 353, 388) and the central territory reshipping rates to be applied to such grain are the rates applicable to grain originating in the Trans-Mississippi River Territory (Ibid.). The only packaged grain thus transported has been alfalfa meal (R. 1230).

The tariff rules specify certain conditions under which reshipping rates may be engaged. Important among these conditions as now in effect and as proposed to be changed, are the following:

1. The exemption of in-bound water traffic from the requirement that the entire through movement shall be by rail carriers or water-and-rail carriers on filed rates continues in effect as to the ex-lake traffic. The exemption was created contemporaneously with the inauguration of the movement of grain in barges over the Illinois Waterways (246 I. C. C. 353, 368, 369). The requirement is a general one affecting the application of several other requirements (246 I. C. C. 353, 368–371).

2. The requirement that the combined in-bound rate and the out-bound reshipping rail rate shall not be less than the local rail rate, and that the

difference necessary to protect the local rate be added to the reshipping rate, continues in effect as to grain arriving in Chicago by rail only. The requirement has never been applicable to the reshipment from Chicago to points in trunk-line territory of grain arriving in Chicago by barge or by lake. The structure of existing particular rules is such as to make an apparent similar requirement in respect to the reshipment of ex-barge and ex-lake grain to points in the central territory. However, the requirement has never been observed in respect to such grain and, under the present proposal, there would be no such requirement as to grain arriving in Chicago by lake or as to packaged grain transported over the Illinois Waterways from Kansas City, Missouri, to Chicago, by the Federal Barge Lines on published rates (R. 19–27, 246 I. C. C. 353, 369).

The over-all exemption mentioned in subparagraph 1 above, whereby the in-bound water traffic is exempted from the requirement that the entire through movement shall be by rail carriers or by water-and-rail carriers on filed rates has been construed so as to make inapplicable to in-bound water traffic the requirement relating to the protection of the local rail rate out of Chicago (see 246 I. C. C. 353, 369).

3. The requirement that the rates shall be subject to transit rules and regulations, published in tariffs lawfully on file with the Commission, now

applicable to grain arriving in Chicago by barge, lake or rail, continues in effect as to the ex-lake and ex-rail grain (R. 19–27). The exemption of ex-water traffic from the requirement mentioned in subparagraph 1 above to the effect that in order to engage the reshipping rate, any through movement shall be by a rail carrier or a water-and-rail carrier on filed rates, and the inherent differences between the ex-water traffic and the ex-rail traffic, make inapplicable to the ex-water traffic any requirement of the transit rules relating to the filing of the in-bound rate, and subject such traffic to the transit rules only to the extent required to police such traffic, namely, the ascertainment of the identity of the in-bound carrier, origin, and rate (R. 51–52; 248 I. C. C. 307, 309).

J. THE DECISION OF THE COMMISSION AND ITS DENIAL OF REHEARING FOLLOWING THE ENACTMENT OF THE TRANSPORTATION ACT OF 1940

The Examiner for the Commission, after the conclusion of the hearing before him, made a proposed report in which he recommended the cancellation of the reshipping rates on ex-barge grain upon the ground that such rates had never been legally applicable. The protestants filed exceptions to the report of the Examiner as to all of its findings and recommendations, and the eastern rail carriers, who originated the proposal to cancel the reshipping rates, excepted as to that part of the report which stated that such rates

had never been legally applicable (R. 51, 246 I. C. C. 353; 248 I. C. C. 307).

The matter was submitted to Division 2 of the Commission, consisting of three Commissioners, on January 8, 1941. In its report of July 31, 1941 (R. btn. 18–19), the Division, with one Commissioner dissenting, adopted the recommendations of the Examiner (246 I. C. C. 353).

The eastern-carrier proponents and the protestants petitioned the whole Commission for reconsideration of the report of Division 2. Petition for reconsideration as filed by the proponents was confined to that part of the report which held the reshipping rates to have been legally inapplicable in the past. On December 1, 1941, the Commission made its report in which it approved the cancellation of reshipping rates. Four of the Commissioners, including Chairman Eastman, dissented. However, the whole Commission found, contrary to Division 2, that the reshipping rates proposed to be cancelled had not been legally inapplicable in the past. The Commission accordingly issued its order on December 1, 1941, vacating its prior order suspending the operation of the schedules and discontinuing the proceeding (R. 47–77; 248 I. C. C. 307).

The Commission at the same time denied the petition of the Inland Waterways Corporation (Federal Barge Lines) for a further hearing. Later on January 21, 1942, the Commission also denied the petition of the Mechling Barge Line

for leave to intervene and for rehearing and reconsideration (R. 90–123, 1724–1725). The petitions on the part of these two barge lines recited that the Transportation Act of 1940 making common carriers by water subject to the jurisdiction of the Commission had become effective during the course of the proceedings and that they had filed their port-to-port grain rates with the Commission (R. 28–46, 90–123). The Mechling Barge Line applied to the Commission on May 29, 1941, for a certificate of public convenience and necessity under Section 309 (a) of the Act, authorizing it to continue operation as a common carrier by water in the transportation of grain and soybeans on the Illinois Waterways. The application was granted by Division 4 of the Commission on November 6, 1941, and a certificate was accordingly issued on the same day (R. 121–123, 1721–1724).

K. THE DISSENTING REPORT OF CHAIRMAN EASTMAN OF THE COMMISSION

In the dissenting report of Chairman Eastman (R. 55–76; 248 I. C. C. 307, 312–324) reference is made to the frequency in practice over a period of years of applying, with the approval of the Commission, reshipping rates, lower than the corresponding local rates; "to rail transportation to or from inland or coastwise ports on traffic carried from or brought to the port by unregulated contract or private water carriers" (R. 57–

58; 248 I. C. C. 307, 313), quite apart from the authority conferred upon the Commission by the Panama Canal Act to establish proportional rail rates for ex-water traffic by common carriers (R. 61; 248 I. C. C. 307, 315). The view is expressed that such reshipping rates are not in contravention of section 2 of the act which provides that a carrier shall not charge one person more than another for like service, for the reason that "there is an essential dissimilarity in attendant circumstances and conditions as between local traffic and traffic which is being transported part of the way from an origin or to a destination which lies beyond, and that this dissimilarity is not extraneous to the transportation service rendered but incident thereto" (R. 65; 248 I. C. C. 307, 317) and that "the practice of charging less for transportation which is a part of a longer through haul than for strictly local transportation between the same points has the sanction of accepted custom" (R. 68; 248 I. C. C. 307, 319).

The Chairman concludes, however, that the proposal to *cancel* the reshipping rates on grain and to *apply* the higher local rates to such grain was unlawful under sections 2 and 3, if not also under section 1 of the act (R. 72; 247 I. C. C. 307, 321–322). He takes exception to the finding of the majority of the Commission that the proposal will not have the effect of prohibiting the reshipment of such grain by rail, and in this connection states that, in view of the common value to which all

grain comes in Chicago, the effect of the proposal would be to confine the outlet of the ex-barge grain to local consumption in Chicago or to reshipment therefrom via lake during the limited season of open lake navigation, with consequent reduction in the prices paid to producers for such grain (R. 70–72; 248 I. C. C. 307, 320–321). He, therefore, regards the proposal as unlawful for the following reasons: (1) The suggestion is made that upon the cancellation of the reshipping rates on ex-barge grain the higher outbound local rail rates might be regarded as unreasonable under section 1 of the act, particularly in view of the long period during which the reshipping rates have been in effect (R. 72; 248 I. C. C. 307, 321–322). (2) As to section 2 of the act, it was said that while reshipping rates "may lawfully vary with the length and nature of the haul to or from the point beyond," as held by the majority of the Commission, the rule of variance, if to be followed at all, "must be equally applied." In this connection, reference was made to the fact that the reshipping rates now apply to ex-barge, ex-lake, and ex-rail traffic irrespective of the distance of the point of origin from the reshipping point and that "certainly there can be no defense, based on the length and nature of the inbound haul or any other circumstance, for depriving the ex-barge grain entirely of the benefits of the reshipping rates while permitting such rates, of the same or a lower level, to apply on ex-rail and ex-lake grain

whatever the point of origin or length of the inbound haul" (R. 72–75; 248 I. C. C. 307, 322–323). (3) For similar reasons, the shippers of ex-barge grain would be unduly prejudiced in violation of section 3 (1) of the act which condemns the subjection of any particular person or place to any undue disadvantage in any respect whatever (R. 75; 248 I. C. C. 307, 323).

II PROCEEDINGS IN THE DISTRICT COURT

Cargill, Inc., and other Chicago protestants instituted an action (No. 3714) in the district court to set aside, and enjoin the operation of, the order of the Commission (R. 133–193). An action for the same purpose (No. 3725) was instituted by the Inland Waterways Corporation which operates the Federal Barge Lines (R. 1–78). The United States of America and the Baltimore and Ohio Railroad Company and other eastern rail carriers were named as defendants in each of these cases (R. 1, 135), and the Interstate Commerce Commission was named as defendant in action No. 3725 (R. 1). These actions were brought under 28 U. S. C. 1940 ed., secs. 41 (28), 43, 44, 45, 45 (a), 46, 47, and 48 (R. 2, 136).

The Secretary of Agriculture of the United States, acting pursuant to Section 201 of the Agricultural Adjustment Act of 1938 (7 U. S. C. 1940 ed., 1291), intervened as plaintiff (R. 87–89, 201–203, 208–209, 1715), and the Alton Railroad Company and other western rail carriers intervened

as parties defendant (R. 127–131, 204–207, 1716), in each of the actions. A. L. Mechling, doing business as the A. L. Mechling Barge Line, intervened as plaintiff in action No. 3725 (R. 90–124, 132, 1714). Answers were filed by all defendants (R. 80–87, 124–131, 195–201, 204–207). The actions were consolidated by an order of the court (R. 208, 1715).

The consolidated cases came on for final hearing before a district court of three judges convened pursuant to Section 47 of the United States code, 1940 ed., Title 28 (R. 1713). The record before the Commission was received in evidence and the cases were argued by the several parties. The court, after making its findings of fact and stating its conclusions of law (R. 1663–1676), entered a final decree (R. 1677–1678) setting aside, and enjoining the operation of, the order of the Commission. In stating its conclusions of law the court held that "The order of the Interstate Commerce Commission discriminates against water competition by the users of barges" (R. 1676). In its findings of fact, the court stated that there was no evidence in the record to support the finding of the Commission that the proposed schedules would not prohibit the rail reshipment of ex-barge grain (R. 1670–1671). It also found that the Commission did not give consideration to the national transportation policy to preserve the advantages of water

transportation as expressed in the Transportation Act of 1940, and that the order would have the effect of nullifying that policy (R. 1674, 1675).

III. PARTIES ON APPEAL

The appellants herein are the Interstate Commerce Commission, the Baltimore and Ohio Railroad Company, and other eastern rail carriers, and the Alton Railroad Company, and other western rail carriers. The appellees are the Inland Waterways Corporation (which operates the Federal Barge Lines), Cargill, Incorporated, and other Chicago grain merchants, the Secretary of Agriculture, and A. L. Mechling, doing business as the A. L. Mechling Barge Line.

SUMMARY OF ARGUMENT

A. Tariff schedules, as proposed by the appellant eastern rail carriers, with the support of the appellant western rail carriers, and approved by the Commission, cancel reshipping rail rates out of Chicago on grain transported to Chicago over the Illinois Waterways, and render applicable to the reshipment of such grain the higher local rail rates. The reshipping rates would continue in effect as to grain arriving in Chicago by lake over the Great Lakes and by rail, including the interstate rails which compete with the grain traffic on the Illinois Waterways. Grain is shipped into Chicago over the Illinois Waterways by barge. The cancellation of the reshipping rates on the ex-

barge grain would divert traffic in grain from the Illinois Waterways to the competitive interstate rails. The rate discrimination thus brought about against the appellee barge lines as common carriers by water on rates filed with the Commission is unprecedented in prior Commission action.

B. The discrimination is such as to involve several sections of the act relating to the unreasonableness of rates, and discrimination and prejudice therein, but this argument will be confined to that aspect of the case which relates to section 3 (4) of the Interstate Commerce Act, which forbids discrimination against connecting common carriers, including common carriers by water.

C. The discrimination against the appellee barge lines, under section 3 (4) of the act, is in contravention of the declared policy of the Congress, as expressed in the Transportation Act of 1940, to preserve the inherent advantage of water transportation, and is thus distinguishable from the discrimination made in connection with the general grain rate structure as involved in *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534.

D. The circumstances under which grain is transited in Chicago (see *Atchison, Topeka & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 777–780; *Board of Trade of Kansas City* v. *United States, supra*) are such as to make these barge lines connecting common carriers by water with the eastern railroads which reship grain from

Chicago to eastern destinations. Physical connection between the large lines and the eastern rail lines is not necessary to establish this relationship. See *Chicago, I. & L. Ry.* v. *United States*, 270 U. S. 287, 293; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144; *Augusta Southern R. Co.* v. *Wrightsville etc. R. Co.* (C. C. Ga. 1896) 74 Fed. 522. It has been held to be a violation of section 3 (4) of the act for a rail line to charge more for traffic brought to the reshipping point by one carrier than that brought by another. *Augusta Southern R. Co.* v. *Wrightsville etc. R. Co., supra; Cutting* v. *Florida R. etc. Co.*, (C. C. Fla. 1887) 30 Fed. 663; *Chattanooga Packet Co.* v. *I. C. R. R.*, 33 I. C. C. 384.

E. The order of the Commission fails to make basic and essential findings relating to the application of section 3 (4) of the act and of the declared policy of the Congress to preserve the inherent advantage of water transportation. The order is, therefore, not in accordance with law. *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 55; *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 489; *Howard Hall Co., Inc.* v. *United States*, 315 U. S. 495, 500; *Mitchell* v. *United States*, 313 U. S. 80; *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 165–166; and *Central Railroad of New Jersey* v. *United States*, 257 U. S. 247.

ARGUMENT

I. THE DISCRIMINATION AGAINST EX-BARGE GRAIN RESULTING FROM ITS UNCONDITIONAL EXCLUSION FROM THE PROPOSED SCHEDULES AS COMPARED WITH THE UNCONDITIONAL INCLUSION OF THE EX-LAKE AND EX-RAIL GRAIN IS WITHOUT PRECEDENT IN PRIOR COMMISSION ACTION

The appellant rail carriers, in making the proposal to cancel the reshipping rates on the ex-barge grain and, to some extent, the Commission in approving the proposal, point to certain features of asserted unorthodoxy about the reshipping rates on ex-barge grain such as (a) they have never been applied so as to protect the local rail rates from Chicago which are higher than the barge-rail rates; (b) there is no arrangement between the barge lines and the eastern rail carriers for continuous movement; (c) the barge rates are not on file with the Commission; (d) the transit rules cannot be fully complied with; and (e) the barge lines are not common carriers.[10]

It took almost seven years for these criticisms to rise to the surface, and the eastern rail carriers, while not averse to having these features of the reshipping rates aired by the western rail carriers, were not themselves disposed to suggest invalidity. The consternation that was caused by the holding of invalidity by Division 2 of the Commission was

[10] See Section I, par. I, of this Brief under "Statement of Case."

allayed by the contrary holding of the Commission sitting as a whole.[11] It dawned upon all alike that any other view would do violence to the continuation of the reshipping rates on the indistinguishable ex-lake grain in the instant case and to a host of other similar reshipping rates not involved in this case.

The ex-lake grain and all ex-rail grain, including ex-rail grain which competes with the ex-barge grain, would continue, under the proposal, in the full and unabated enjoyment of the reshipping rates which are proposed to be denied to the ex-barge grain. The new schedules do not require that the ex-lake grain shall be by common carriers, or on rates filed with the Commission, or that the local rate shall be protected. Nor is there any requirement that there shall be an arrangement for through movement.

The unconditional inclusion of the ex-lake grain stands in striking contrast with the unconditional exclusion of the ex-barge grain. Nothing that the ex-barge grain might do would entitle it under the proposal to the benefit of the reshipping rates. The fact that two of the barge lines, appellees herein, are recognized common carriers by water and have filed their port-to-port rates with the Commission would avail them nothing. Barge lines may make all sorts of arrangements for through movement

[11] See Section I, par. D, of this Brief under "Statement of Case."

and still be excluded, and they could not protect the local rate if they wanted to.[12] The barge-rail rates under the new schedules would more than protect the local rate. They would exceed the local rate by the amount of the rate on the inbound barge haul.[13]

The adoption of the new schedules would mean that the higher local rates from Chicago would become applicable to the reshipment of ex-barge grain by rail. The local rail rates from Chicago are higher than the reshipping rail rates therefrom by 8.5 cents to points in trunk-line territory and by 1.5 cents to 7.5 cents to points in central territory, resulting, under the proposal, in a corresponding increase in barge-rail combination rates from points of origin to points of destination.[14]

The record is clear that the local rates out of Chicago are so much higher than the reshipping rates that grain cannot move on such rates in competition with that which is entitled to the reshipping rates, and that this will tend to divert traffic in grain from the Illinois Waterways to the competitive rails. Producers of grain are paid the Chicago price less the cost of the in-bound transportation. It follows that farmers whose grain can be trans-

[12] See Section I, par. I, of this Brief under "Statement of Case."

[13] See Section I, par. H, of this Brief under "Statement of Case."

[14] See Section I, par. H, of this Brief under "Statement of Case."

ported by barge receive the benefit, in the prices paid to them, of the low barge rates, and that this benefit does not go to the Chicago operators. For this reason, the ex-barge grain has exactly the same value in the elevators in Chicago as the ex-lake or ex-rail grain, and naturally it will not be moved east-bound by rail on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates. Grain is bought by the Chicago operator and is shipped to Chicago without knowledge of where it will go after it reaches Chicago. This is true of practically all grain shipments to primary markets, and the through transportation which is reflected in reshipment rates therefrom is to this extent fictional. The low barge rates cannot be used by the elevator operators in Chicago to offset the higher level of the local rates as compared with the reshipping rates. Under the proposed schedules the only outlet for ex-barge grain from Chicago would be by lake. There are many eastern destinations which cannot be reached by lake, and the movement by lake may only take place during the seven months of open lake navigation. The Chicago operators, upon finding that the ex-barge grain cannot be handled with the same facility as the ex-rail grain, would either cease to buy ex-barge grain, or buy the same only at a discount.[15] The

[15] See Section I, sub-pars. D-1, F, G, H, and K of this Brief under "Statement of Case," including dissenting report of Chairman Eastman of the Commission (R. 70-71; 248 I. C. C. 307, 320-321).

realization by producers that there would no longer be any advantage in shipping their grain to Chicago by barge will be the opening wedge for the diversion of traffic in all grain from the Illinois Waterways to the competitive interstate rails. The advantage will then be with the rails because of the more rapid transit which they can furnish. Thus the producer would lose the benefit of low-cost barge transportation over the Illinois Waterways.

The finding of the Commission to the effect that the cancellation of the reshipping rates on the ex-barge grain would not *prohibit* the reshipment of such grain is not material to the argument made in this brief and also has doubtful support in the record. The eastern rail carriers, in referring in their brief to this finding, state (p 80) that while the finding "may not have been established beyond all reasonable doubt," it was established as a "reasonable presumption." This is tantamount to an assertion that the proposal will not reduce traffic in grain on the waterways and is wholly irreconcilable with the stated purpose of such carriers to assist the western rail carriers in the desire of the latter to regain the tonnage in grain which has been lost by them to the barges. The eastern carriers are now transporting from Chicago their share of all grain which comes into Chicago, including the ex-barge grain. The realization on their part that they would lose the barge tonnage, as such, upon the adoption of the sched-

ules to cancel the reshipping rates thereon, now maintained by them, is accompanied by their definite expectation that this loss would be recouped co-extensively with the increase in traffic in grain over the western rails which is contemplated would take place upon the adoption of the schedules. The rail carriers would be greatly disappointed in their expectation if, by any chance, this diversion of traffic did not take place."[18]

The rail carriers urged, and the Commission found, that the continuation of the reshipping rates on ex-barge grain would tend to disturb the general grain rate structure. This disturbance is attributed to the mere circumstance that to destinations in trunk-line territory the present barge rail rates are lower than the local rail rates from some rail origins in Illinois, Indiana, and Ohio, nearer to such destinations than the ex-barge grain is upon its arrival in Chicago. The record leaves this tendency to disturbance in a highly conjectural state. At present, there is neither preference to the barge shipper nor prejudice to the non-barge shipper, and no shipper of the latter class is present to espouse the cause of the rail carriers.

The Commission, and this Court, in *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, have already expressly approved a grain rate

[18] See Section I, par. D-1, of this Brief under "Statement of Case."

structure in which there are many discriminations based upon the fact that in certain circumstances a long haul over the same route will have a lower rate than a shorter haul. A discrimination of this character has thus not heretofore been regarded as, in itself, a discrimination which would break down the grain rate structure. The Commission's finding in the case at bar is wholly immaterial to the question presented for decision here in any event, inasmuch as the Court must here decide not whether the Commission may discriminate, but in what manner the Commission may discriminate. If the Transportation Act of 1940, as hereafter argued, prohibits the Commission from approving a rate which discriminates against a water carrier for the sole purpose of preventing the water carrier from retaining low-cost advantages inherent in that form of transportation, the mere fact that such a discrimination is thought by the Commission to be necessary or desirable cannot justify its approval.

The proposal of the rail carriers to cancel the reshipping rates on the ex-barge grain and to apply to such grain the higher local rail rates out of Chicago with the continuation of the reshipping rates as to the ex-lake and the ex-rail grain is so discriminatory in its effect as to involve several sections of the act, namely, section 1 (5) (a), relating to unreasonable rates; section 2, relating to the unjust discrimination in charging one person

more than another for a like service; section 3 (1), making it unlawful to subject any particular person or place to any undue prejudice; and section 3 (4), forbidding discrimination against connecting common carriers, including common carriers by water. However, the argument in this brief will relate specifically only to that aspect of the case which involves the application of section 3 (4) of the act in the light of the national transportation policy to preserve the inherent advantage of water transportation.

II. THE COMMISSION, IN APPROVING THE PROPOSED SCHEDULES, FAILED TO GIVE EFFECT TO SECTION 3 (4) OF THE INTERSTATE COMMERCE ACT AS AMENDED BY THE TRANSPORTATION ACT OF 1940

The charge made by the Inland Waterways Corporation (Federal Barge Lines) and the Mechling Barge Line, appellees herein, to the effect that the proposed schedules would result in a discrimination against them, as connecting common carriers by water, under section 3 (4) of the act, is not adequately disposed of by the Commission in its report.

The appellee barge lines strongly urged the Commission by petition to give them a rehearing. The petitions for rehearing called the attention of the Commission to the fact that these lines had become subject to the jurisdiction of the Commission under the Transportation Act of 1940, and that they had filed their port-to-port rates with

the Commission between the time of the conclusion of the hearing before the Examiner for the Commission and the report of the Commission sitting as a whole. The petitions were overruled with the observation by the Commission that it would take official notice of the filing of such rates (248 I. C. C. 307, 308).

The question whether each of the appellee barge lines is such a connecting common carrier by water as is contemplated by section 3 (4) of the act is discussed in the brief of the eastern rail carriers (pp. 54–60). These carriers contend that the barge lines are not connecting carriers for the reason that there is no "through route" for the shipment of ex-barge grain through Chicago to eastern destinations. It is recognized by the Commission that the physical carriage beyond the reshipping point is substantially the same whether the grain is ex-rail or ex-barge (248 I. C. C. 307, 311), and it is conceded by the eastern rail carriers in their brief (pp. 54–60) that a physical connection between their rails and the barge lines is not necessary to constitute a connecting carrier relationship. See also *Chicago, I. & L. Ry.* v. *United States*, 270 U. S. 287, 293; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144; *Augusta Southern R. Co.* v. *Wrightsville, etc., R. Co.* (C. C. Ga. 1896), 74 Fed. 522. The circumstances under which grain is transited at Chicago would seem to make all ex-lake, ex-rail, and ex-

barge traffic therein that of connecting carriers. In-bound grain from one origin is commingled with grain from other origins in Chicago elevators at a time when it is not known just what disposition will be made of any part of the grain. To engage the reshipping rates, it is not necessary to identify the particular lot of inbound grain. This Court has had occasion to take notice of the manner in which grain is transited at important gateways. *Atchison, Topeka & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 777–780; *Board of Trade of Kansas City* v. *United States, supra.* Under the proposed schedules, the ex-barge grain could move out of Chicago by rail only at the local rates which are higher than the reshipping rates applicable to ex-lake and ex-rail grain.

It has been held that it constitutes a violation of section 3 (4) of the act for a carrier to charge more for traffic brought to the reshipping point by one carrier than that brought by another; *Augusta Southern R. Co.* v. *Wrightsville etc. R. Co., supra; Cutting* v. *Florida R. etc. Co.* (C. C. Fla. 1887), 30 Fed. 663; *Chattanooga Packet Co.* v. *I. C. R. R.*, 33 I. C. C. 384.

The report of the Commission does not refer in any way to the declared policy of the Congress to preserve the inherent advantages of water transportation. The Transportation Act of 1940, laying down this policy, was enacted during the course of the proceedings before the Commission. The

appellee barge lines and other protestants petitioned the Commission for a rehearing in order that this policy might be taken into consideration by the Commission.

It has been shown that the schedules proposed by the eastern rail carriers, and approved by the Commission, would inevitably divert traffic in grain from the Illinois Waterways to the competing rails of the intervening western rail carriers despite the lower cost of the water transportation and that this diversion is the hope of the rail carriers. The inherent advantage not only, but the very existence of water transportation is at stake. The declared policy of the Congress is to preserve this advantage.

The rail carriers make no secret of their antipathy toward any water transportation that tends to take business away from the rails and they avow their purpose to stand together in a determined effort to drive the grain off the waterways onto the rails. The schedules proposed by them as necessary for the preservation of the general grain rate structure clearly involve, as intended by them, a destruction of the traffic in grain on the Illinois Waterways.[17] It is asserted by the eastern rail carriers in their brief (p. 65) that the inherent advantage of water transportation is "not necessarily paramount * * * to the protection of an

[17] See Section I, par. D-1, of this Brief under "Statement of case."

extensive rate adjustment on important [rail] traffic".

To preserve in this case the inherent advantage of water transportation would not inflict injury on persons whose geographical location is such as to put the advantage out of their reach. Moreover, all the advantage in transportation is not with the water. Many times it is a choice between slow transit at low cost and rapid transit at high cost. The low cost of water transportation inevitably affects rail traffic, but this constitutes no good reason for making changes in rail rates for the sole purpose of destroying the water traffic. Vigilance is required lest the inherent advantage of water transportation be whittled away.

The Transportation Act of 1940 charges the Commission with the duty of so administering the provisions of the Interstate Commerce Act as to preserve the inherent advantage of each mode of transportation and the legislative history of the act emphasizes the need for preserving the advantage of water transportation. The eastern rail carriers say that this has been the policy of the Congress for a long time (Eastern rail carriers' brief p. 60). Even so, it appears that the Congress felt the necessity of reiterating the policy at a time when it was subjecting common carriers wholly by water to the jurisdiction of the Commission for the first time.

In the conference report of the Senate and House of Representatives on the Transportation

Act of 1940 (H. R. 2016, 76th Cong. 3d Sess., p. 82), it was stated that while heretofore water transportation, with limited exceptions, "has not been within the fostering care of interstate regulation," the act will place upon the Commission "not only the power, but also the duty, to protect and foster water transportation and preserve its inherent advantages." The legislative history of the act shows that those in charge of the bill in the Senate and House recognized that the outstanding inherent advantage of transportation by water was its low cost and that this advantage was to be preserved.

The following colloquy took place on the floor of the Senate between Senator Wheeler, chairman of the Senate Commerce Committee, and Senator Lucas (84 Cong. Rec., p. 5879):

> Mr. LUCAS. Returning to the previous discussion with respect to control of inland waterways, I will say to the Senator that I live in the Illinois Valley. We have transportation upon the Illinois River between Chicago and St. Louis and on down the Mississippi to New Orleans. The town in which I live is a focal point for the transportation of wheat and corn down the Illinois. The price of wheat and corn at the elevator there is always 2 or 3 cents higher than it is at elevators some 25 or 30 miles farther inland because of the difference between the rates by rail and those by water.

> Under the bill, as I understand it, the Interstate Commerce Commission would have the power, and it would be its duty, to fix rates on the Illinois River with respect to the transportation of that wheat and corn. Would it be possible for the Interstate Commerce Commission to fix the rate the same as the railroad rate from that point to St. Louis?
>
> Mr. WHEELER. Not if the Commission does its duty, because the bill specifically provides that it must take into consideration the inherent advantages of the water carrier. Everyone agrees that goods can be shipped more cheaply by water than by rail.

Congressman Halleck, a member of the subcommittee of the House Committee on Interstate and Foreign Commerce, in an explanation of the bill before the House, said:

> * * * This Government has spent millions and hundreds of millions of dollars to develop cheap economical transportation. No one would be so ridiculous as to seek to destroy this investment. The communities served by this transportation have a right to the continuation of this service. There is nothing in the bill which seeks to destroy that service. Rail transportation is the most valuable transportation because it is faster and more convenient. The water people will admit that. If a person had the same rate he would ship by rail rather than

water. As a result the ceiling of rates is fixed by the railroads. The water carriers operate under that ceiling at a competitive point because their costs are less. The bill recognizes that differential and the reason supporting it. This bill provides for the continuation of that differential. I might refer you to the provisions of the bill but I do not want to take the time necessary to read them.

The declaration of policy demands of the I. C. C. that it administer this act to recognize and preserve the inherent advantages of each type of transportation (84 Cong. Rec., p. 9711).

* * * * *

I would just like to say about that question that if anyone can find in the hearts or the minds of any of us who have worked on this bill any intent or determination to take from the country the benefits of cheap transportation, I fail to see it. I have said time and again here and to the country that there were proposals coming from different sources that would have done that but we refused to accept them. The very declaration of policy requires the Interstate Commerce Commission to say to the country whatever benefits of cheap transportation we have. I would be the last person to say that after we have spent all this money to develop water transportation we ought to throw it away. * * * (68 Cong. Rec., p. 10187. For similar state-

ments see also 84 Cong. Rec., pp. 5951, 6127, 8662-63; 86 Cong. R[illegible]., p. 5878).

In explaining the meaning of the inherent advantage of water transportation, Senator Wheeler and Congressman Halleck stated as follows:

> Senator WHEELER. When the bill speaks of inherent advantages of the shipping interests, it refers to carriers which can transport at a cheaper rate because they can ship by water, by way of canals and the ocean, so they have natural advantages, and they do not have the expense of the upkeep of the rights-of-way, as railroads do (84 Cong. Rec., p. 6127).
>
> Congressman HALLECK. I think it has a very definite meaning. To me it means a recognition of the rights of the country to cheap and economical transportation by water, that there are certain advantages inherent in that type of transportation and that these advantages shall be preserved to the people of this country. I think you cannot read anything else into it * * * (84 Cong. Rec., p. 9711).

The concluding sentence in the policy section of the act reading "All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy" was added to this section pursuant to an amendment made in the House in order to give assurance that the policy thus declared by the Congress would be effectuated (84 Cong. Rec., pp. 9861–66).

III. AN ORDER OF THE INTERSTATE COMMERCE COMMISSION MAY BE SET ASIDE WHERE THE COMMISSION HAS PROCEEDED UPON A MISTAKEN VIEW OF LAW, OR HAS FAILED TO MAKE BASIC FINDINGS

In issuing the order now under consideration, the Commission, for aught that appears in its report of findings, did not view with importance the complaint of the appellee barge lines that the schedules would constitute a discrimination against them as common carriers by water under section 3 (4) of the act. The issue was one which clearly called for special consideration of the application of section 3 (4) in the light of the declared policy of the Congress to preserve the inherent advantage of water transportation.

This Court frequently finds it necessary to invoke the clearly declared policy of the Congress in the interpretation and application of regulatory legislation, and requires no less of agencies charged with the duty of administering such legislation. *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 55. A clearly declared policy of the Congress gives the measure of delegated authority to such agencies. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 165–166.

The Commission is required not only to apply the governing law and policy but to make appropriate findings in order that judicial review may be effective. *United States* v. *Carolina Freight*

Carriers Corp., 315 U. S. 475, 489; *Howard Hall Co., Inc.* v. *United States*, 315 U. S. 495, 500; *Central Railroad of New Jersey* v. *United States*, 257 U. S. 247. See also *Mitchell* v. *United States*, 313 U. S. 80.

CONCLUSION

It is respectfully submitted that the order of the Commission is not in accordance with law and that the decree of the district court should be affirmed.

Respectfully submitted.

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DECEMBER 1942.

APPENDIX

IMMEDIATELY PERTINENT PROVISIONS OF INTERSTATE COMMERCE ACT

Act September 18, 1940, c. 722, Title 1, Section 1, 54 Stat. 899, Title 49, U. S. C., preceding Section 1:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 1, Paragraph (5) (a) of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 1 (5) (a)):

> (5) (a) All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Section 2 of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 2):

> SEC. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3, Paragraph (1) of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 3 (1)):

> (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corpora-

tion, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage, to the traffic of any other carrier of whatever description.

Section 3, Paragraph (4) of Part I of the Interstate Commerce Act (U. S. C., Title 49, Section 3 (4)):

(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 175

INTERSTATE COMMERCE COMMISSION, et al.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF ON BEHALF OF APPELLEES,

Inland Waterways Corporation, Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation and Continental Grain Company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 175

INTERSTATE COMMERCE COMMISSION, et al.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF ON BEHALF OF APPELLEES,

Inland Waterways Corporation, Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation and Continental Grain Company.

Opinions Below.

The specially constituted District Court rendered no written opinion. Its findings of facts and conclusions of law in *Cargill, Inc., et al.* v. *U. S., et al.*, and *Inland Waterways Corporation* v. *U. S., et al.*, (R. 1662-1676) are reported in 44 Fed. Supp. 368.

The report of the Interstate Commerce Commission, Division 2, in *Investigation and Suspension Docket No. 4718, Grain Proportionals, Ex-barge to Official Territory,* appears in 246 ICC 353 (R. following page 18), and the report of the entire Commission on reconsideration (four Commissioners dissenting) appears in 248 ICC 307 (R. 47).

Jurisdiction.

The final decree of the District Court was entered on April 16, 1942. (R. 1677) Petition for appeal was filed (R. 1679) and allowed on May 21, 1942. (R. 1691) Probable jurisdiction was noted by this Court on October 12, 1942. The jurisdiction of this Court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (Title 28, U. S. C., Secs. 47 and 47a) and Section 238 of the Judicial Code as amended. (Title 28, U. S. C., Sec. 345)

DEFINITION OF TERMS.

In the interest of brevity, we define some of the terms used below: Grain arriving at Chicago via the Illinois waterways and reshipped therefrom via rail, either immediately or after a period of storage, is referred to as "ex-barge" grain. Grain arriving at Chicago on steamers over the Great Lakes and similarly reshipped therefrom is referred to as "ex-lake" grain. Grain arriving at Chicago via railroad and similarly reshipped therefrom is referred to as "ex-rail" grain.

Separately established rates, which by their terms apply only to grain which has received a prior transportation service of the particular character specified in the tariffs naming such rates, are referred to as "proportional" or

"reshipping" rates. Rates of this character as provided via rail from lower Lake Erie ports to the east on grain received at such ports via lake are referred to as "ex-lake" rates. Rates named on traffic originating locally at point of shipment, or which apply when the traffic shipped does not meet the conditions specified for the application of proportional, reshipping or ex-lake rates, are referred to as "local" rates.

The transportation document (usually a receipted freight bill) which discloses the fact and extent of a particular transportation service is referred to as "billing," and the inbound billing on ex-barge, ex-lake, and ex-rail grain is referred to as "ex-barge billing," "ex-lake billing", and "ex-rail billing." Such billing is treated as representative of the grain covered thereby and constitutes the evidence required to engage the application of the proportional, re-shipping or ex-lake rates on a reshipment made after an authorized period of temporary storage.

The privilege accorded a commodity of temporary storage at a point between first origin and final destination, and subsequent reshipment from such point on the basis of proportional or reshipping rates lower than local rates, is referred to as "transit."[1]

Questions Presented.

The order of the Interstate Commerce Commission enjoined below approved as just, reasonable, and not otherwise unlawful (R. 55) a proposed change in freight rates

[1] This transit is identical with the transit at the rate-break point described in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. It is not like the creosoting-in-transit involved in *Central R. of N. J.* v. *U. S.*, 257 U. S. 247.

by eastern railroads which is designed to deprive ex-barge grain of the privilege of reshipment from Chicago[2] to eastern destinations on the basis of proportional and reshipping rates. That proposal also contemplates the continued application of such proportional and reshipping rates to ex-lake and ex-rail grain. In form, the assailed order of the Commission vacated a prior order which had suspended the effectiveness of the proposed change pending an investigation into the lawfulness thereof.[3] The only rates in issue before the Commission were the separately established outbound rates on grain from the reshipping points to eastern destinations.[4]

The District Court composed of Evans, Circuit Judge, and Woodward and Holly, District Judges, enjoined the order on the complaint of the appellees, who were among the protestants before the Commission.

The ultimate question presented is whether the Commission acted within the limits of its authority. The subordinate questions on which the case turns may be stated in definite form as follows:

1. Did the District Court have jurisdiction upon the complaint of the appellees to enjoin the order in the event it is shown that it was entered upon a misconstruction and misapplication of the statute? Subordinate questions on this point are: (a) Is an order vacating, after full hearing, an order instituting an investigation and suspension pro-

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2 While rates from other reshipping points were involved in the tariffs under investigation, we confine ourselves to Chicago since it is representative and is the reshipping point in which appellees are directly interested.

3 While the suspension was only for a period of seven months, the respondents voluntarily deferred the effective date of the proposed change until the Commission could decide the case.

4 The inbound rates *to Chicago* were not in issue and the western railroads, lake lines and barge lines, which publish and control the inbound rates, were not respondents in the order of suspension and investigation. Some of these carriers did become parties to the proceeding by entering an appearance at the hearing.

ceeding under Section 15(7) of the Act of the character which can be reached by the injunctive process?[5] (b) Did the Inland Waterways Corporation have an interest and standing which entitled it to bring and maintain its suit in the District Court?[6] (c) Were the railroads proper defendants in the District Court?[7] and (d) Do the grounds of invalidity on which appellees rely involve questions of law which it was proper for the Court to determine?

2. In finding under Section 1 that the particular rates here proposed would be just and reasonable, may the Commission take into consideration prior charges via barge paid inbound to Chicago and treat with the case as if it involved the aggregate of the inbound and outbound charges? Stated differently, may the Commission rest its conclusion that a separately established reshipping rate is just and reasonable for the future on the premise that the through rate resulting from combining that rate with a separately established inbound rate not in issue appears to the Commission to provide a just and reasonable through rate?

3. In a case in which the only rates in issue are the separately established proportional and reshipping rates, outbound from Chicago, does a difference in the types of carriers performing the inbound service, a difference in the lengths of their respective inbound hauls, and a difference in the charges assessed by such carriers for their respective inbound services constitute a dissimilarity of conditions within the meaning of Section 2 of the Act?

4. Did the Commission correctly construe the statute in

[5] This question is raised only by the briefs of the western railroads, who are not subject to the order, and is not raised by either the Commission or the eastern railroads.

[6] This question is not raised by the Commission which issued the order but is raised in the briefs of the eastern railroads.

[7] This question is raised only by the briefs of the eastern railroads. The Commission does not complain of the joinder.

holding that a difference in the outbound reshipping rates does not amount to a discrimination in rates in violation of Section 3 (4) of the Act between the connecting barge lines, on the one hand, and the connecting lake lines and western rail carriers, on the other, because of a difference in the nature and amount of the inbound services, and a difference in the charges assessed by the inbound carriers? A subordinate question under Section 3 (4) suggested in the briefs of appellants is: Must a through route be established by common arrangement before a common carrier by water can be considered a connecting line within the meaning of Section 3(4)?

5. (a) Were the rates in issue, as applied to ex-barge grain, proportional rates of the character defined and authorized by Section 6 (11) (b) of the Act, and if so, did the Commission act arbitrarily in refusing to determine in the case before it what would constitute reasonable proportional rates, as distinguished from local rates, on ex-barge traffic? (b) Did the Commission hold the railroad respondents to the burden of proof imposed by Section 15 (7) of the Act upon the proponent of a proposed increase in such rates?

6. Is there any evidence to support the preliminary finding that the proposed change would not prohibit the movement of grain via the barge-rail route to eastern destinations, and that the principal commercial effect of such change would only be to reduce the profits of the Chicago elevator operators?

7. Does the report of the Commission contain essential, preliminary findings sufficient to disclose a legal basis for the order and a proper application of statutory standards?

The foregoing questions, 2 to 7 inclusive, go directly to

the validity of the assailed order, and on the answer to them depends the propriety of the action of the Court below.

Statutes.

The pertinent provisions of the Interstate Commerce Act relied on herein are reproduced in Appendix "A" hereto.

Statement.

The record before the Commission embraces many matters which bore upon the issues before the Commission but do not bear upon the narrow questions of law presented here. Consequently, we restrict our statement to those facts which it is necessary to consider in disposing of the questions of law.

Most of such facts are stated in the reports of the Commission. However, it is necessary to go to the record before the Commission for the following purposes: (a) to explain some statements in the reports which are not clearly put; (b) to supply facts which the Commission did not mention, such as the barge rates from Kansas City, the lake rates from Duluth, and the movement of grain on such rates; (c) to show that the finding of the Commission regarding the effect of the proposed change on reshipments via rail of ex-barge grain is contrary to the evidence; and (d) to make clear the interest of the appellees and the effect of the Commission's order upon them.

THE RATE STRUCTURE.

The principal witness for the eastern lines stated that the proposal was made in the hope that the inbound movement of grain to Chicago would thereby be driven off the

barges and back onto the rails. (R. 266-7) Stated differently, the eastern carriers sought to destroy inbound barge service through the medium of establishing prohibitive rates on the reshipment from Chicago of any grain which arrived at that point over the Illinois waterways. The order of the Commission found that the change which the eastern lines proposed in their rates in order to accomplish that end would not result in any violations of the statute. The considerations upon which the Commission proceeded and upon which the validity of its order depends can be fully illustrated by considering only the following representative rates:

The inbound *interstate* rates via railroad which must be paid to Chicago to place grain in the elevators from whence it is subsequently reshipped are 9.5 cents[8] from Morris, Ill., and 16 cents from Kansas City, Mo. (Exhibit 67; R. ex. vol. p. 102) These are representative origins for the shipment of both ex-rail and ex-barge grain. The railroad rates from Duluth, Minn., to Chicago are 13 cents for proportional application, and 26 cents for local application. (Exhibit 72; R. ex. vol.[8a] p. 120)

The water rates to Chicago via barge are 2.75 cents from Morris, and 10.75 cents[9] from Kansas City. The water rate from Duluth to Chicago via lake steamer is 6.25 cents. (Exhibits 67, 72; R. ex. vol. pp. 102, 120)

The proportional and reshipping rate on domestic traffic from Chicago to New York, a representative destination, which presently applies on ex-barge, ex-lake, and ex-rail grain is 26 cents regardless of the territory

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[8] All rates are named herein in cents per hundred pounds.

[8a] "R. ex. vol." refers to the separate volume in which are reproduced the principal exhibits in the Commission proceedings.

[9] There are also other barge rates from Kansas City, Missouri, governed by different minimum weights per shipment. A rate as low as 8.8 cents is shown in Exhibit 63. That exhibit is not among those in the printed record.

in which the grain originated.[10] This rate is governed by Note 20 reproduced in Appendix III to the report of Division 2 (R. 18, p. 387),[11] hereinafter referred to as the Note 20 proportional. The corresponding local rate from Chicago to New York, which the Commission approved for ex-barge grain in the future, is 34.5 cents, an increase of 8.5 cents.[12] (R. 18, p. 365)

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[10] The brief of the Commission states "the key rate or basis of the grain structure was the Chicago-New York rate." (Br. 46) The western railroads use only the Chicago-New York rate to illustrate the eastern adjustment. (Br. 5) In its report on reconsideration the Commission uses New York as representative in stating that the through rate from Morris via rail is composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents. (R. 53)

[11] The Commission print of the report of Division 2 appears in the printed record immediately following page 18. Record references in this style indicate the page of that report.

[12] From Chicago to destinations in Central territory, there are three different levels of proportional and reshipping rates on *ex-rail grain*, as shown in a table on page 365 of the report of Division 2 (R. 18, p. 365) These different levels for ex-rail grain are conditioned on the territory in which the grain originated, the Northwest basis applying on grain from Minneapolis and Duluth, Minn., and points in that direction; the trans-Mississippi basis applying on grain from Kansas City and points in that direction; and the Reshipping (the term being capitalized) basis applying on grain originating in Illinois. The *highest* of these is the Northwest basis. Prior to 1935, that basis applied on ex-lake grain from the head of the lakes. At that time there was some dispute as to which of these bases should apply on ex-barge grain from Illinois. To resolve that controversy, the eastern railroads on June 1, 1935, substituted a single agency tariff issue for the individual tariffs of the individual railroads. In rephrasing the tariff application notes in that agency tariff issue, the eastern railroads sought to secure uniformity as between outbound railroads and to treat all ex-water grain the same by making the Northwest basis (the highest) applicable on best-arrived grain without specification of origin territory. (R. 1423) A witness for the eastern lines testified that the language contained in the present Note 40 was selected in order to carry out that intent. (R. 1452-3) However, it should be noted that the trans-Mississippi rate (Note 20 in a tariff different from that naming the open proportional to New York) purports to apply on grain received at Chicago from Kansas City via either a rail or a water transportation line (Ex. 1, p. 4; R. (ex. vol.) p. 4) This is mentioned only in the interest of accurate statement, since none of the legal questions involved in this case turns on any incidental question as to how the present tariff should be construed and applied. Nor does the fact that ex-barge grain from Illinois presently takes a *higher* basis of proportional and reshipping rates than ex-rail grain from Illinois have anything to do with the proposal to deprive ex-barge grain of any proportional or reshipping basis whatsoever.

These rates are not Commission rates. Prior Commission cases involving an independent consideration of the proportional and reshipping rates in the territory east of Chicago are summarized in Section 2 of Appendix "C" hereto.

THE PROCEEDINGS BEFORE THE COMMISSION.

The case before the Commission arose when railroads, operating from Chicago to the east, filed with the Commission new tariffs to become effective October 15, 1939. By these tariffs, the eastern railroads proposed to restrict the proportionals above described so that they would not apply on ex-barge grain although they would continue to apply on ex-rail and ex-lake grain. (R. 18, p. 354) There was one exception to this restriction, *i. e.*, by the new tariffs the Note 20 proportional to New York and the trans-Mississippi proportional to Central territory would continue to apply on the reshipment of grain which had moved via barge from Kansas City, Mo., to Chicago under rates published in a particular tariff which the Inland Waterways Corporation had on file with the Commission.[13]

Other than on the excepted shipments, the effect of the proposal would be to subject ex-barge grain to the full local-rate basis and to New York would increase the rate

[13] Item 3632 of Federal Barge Lines' Freight Tariff, No. 31-J, I. C. C. No. 148, supplements thereto, or successive issues thereof. (Ex. 1, p. 7 for the trans-Mississippi application; p. 22 for the Note 20 application; R. ex. vol. pp. 7, 22) This exception will be described in detail in connection with the description of the Inland Waterways Corporation.

by 8.5 cents. The appellees, with others, protested this proposed change as constituting a violation of Sections 1, 2 and 3 of the Interstate Commerce Act.[13a] Thereupon the Commission suspended the proposed change until May 15, 1940, and entered into an investigation concerning the lawfulness thereof. The proceedings were not concluded by May 15, 1940, and the railroads voluntarily postponed the effective date of the proposed change until the Commission could conclude its investigation and enter an appropriate order. (R. 18, p. 354)

A full hearing was had in the matter in December of 1939 and January of 1940. The eastern railroads were the only respondents before the Commission although western railroads became parties by entering appearances. The respondents presented only one witness, W. T. Tannehill, whose direct evidence occupies only six pages of the printed record. (R. 214-20) He stated that the reasons for the proposal were as follows (R. 214):

> "The loss of tonnage to the rail carriers; the serious disturbance the present situation is having upon the grain rate structure in the territory generally; the discrimination and undue prejudice and preference as against rail shippers of grain in the origin territory in Illinois."

Each of these reasons related only to the competition between western railroads (or western segments of eastern railroads) on the one hand, and barge service via the Illinois River, on the other, for the inbound tonnage of the grain into Chicago.

There is no claim that the eastern lines, who are responsible for and in control of the rates in issue, have lost

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[13a] Section 1 prohibits "every" unjust and unreasonable rate for any service or "any part thereof." Section 2 prohibits charging one shipper more than another shipper for a like service in the transportation of like property under substantially similar circumstances and conditions. Section 3(4) prohibits discrimination in rates as between connecting carriers.

any tonnage because the proportional and reshipping rates, rather than the local rates, have been applied to ex-barge grain. The proposal was made because of tonnages to Chicago which western railroads had lost to barge service. Western lines complained that they had been unable to meet the barge competition for the inbound hauls, even by the publication of certain reduced intrastate rates (sometimes called lake locals), which were restricted so as not to apply on grain reshipped via rail under transit. (R. 18, p. 364)

The witness for the eastern lines said (R. 266-7):

> "We made this proposal, as I have stated several times, and filed these tariffs with the hope that we could drive this business off of the water and back onto the rails where it belongs and quit whittling down our rates farther and farther away from the influence of this water all the time because of cross-country competition *in the origin territory* and to put this grain back on the rails where it belongs."

The alleged disturbance in the railroad rate structure related entirely to the establishment of the reduced intrastate rates only on corn to Chicago published "to meet water and truck-water competition" (R. 216), and the District Court so found. (Finding No. 23; R. 1674) That adjustment had spread over east of the Indiana-Illinois state line, but only because the New York Central operates from Streator through Dwight, Reddick, Kankakee, Momence, and Delmar, Ill., and thence across the state line through Schneider, Ind., *into Chicago.*[14] (R. 258)

[14] In referring to these intrastate rates, counsel for the Commission repeatedly asserts that the proportional and reshipping rates are not applicable on ex-rail grain received thereon. This is not an accurate statement. The proportional and reshipping rates of the eastern lines are not restricted against that traffic. The restriction of the inbound rates to Illinois intrastate traffic only is published and maintained by the originating carriers, the western lines. (R. 259; 1261) Even after grain moves inbound on these intrastate rates, it can still move outbound on the proportional and reshipping rates provided the inbound charges are set up to the basis of the inbound *interstate* rates. (R. 259) Exhibit 12 (R. (ex. vol.), p. 56) contains a statement of cars so handled. (R. 220)

There is not a word of evidence that the existing adjustment, which has been in effect and used since 1933, has either induced any actual change, or has threatened a prospective change, in the rates from any Indiana or Ohio origin to an eastern destination. No shipper to New York on any rate from an origin east of Chicago appeared to complain of the existing adjustment or to suggest, if continued, that his rates should be changed.

The only shipper *from a country station* away from the influence of the river who testified regarding the effect of the barge movement on shipments to eastern destinations or to markets other than Chicago, was Witness Burwash, a farmer and country elevator operator at Savoy, Ill., 132 miles directly south of Chicago, who has available only transportation on the normal all-rail basis. He testified that the lower rates enjoyed by farmers in the Illinois River Valley did not disadvantage him in any way, and that if the advantage now enjoyed by the ex-barge grain from Morris was taken away, it would do him no good.[15] (R. 1077)

At the time the case was heard, the inbound rates via barge on bulk grain were not subject to the Interstate Commerce Act and were not filed with the Commission. This lack of Commission regulation of the inbound water rates was given as an additional reason by eastern railroads for the proposal under investigation. (R. 256; statement of railroad counsel, R. 325) This fact was also offered in explanation of why the eastern railroads proposed that the proportional and reshipping rates continue to apply on ex-barge grain transported to Chicago under a particular item in an Inland Waterways Corporation tariff, which was on file with the Commission, as heretofore noted. (R. 256)

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[15] The through railroad rate on grain from Savoy, Ill., to New York City is indicated as 38 cents. (R. 384-5)

THE REPORTS OF THE COMMISSION.

After hearings, the Commission, Division 2, issued its report and order of July 31, 1941, 246 I. C. C. 353. (R. 18) Pages 353 to 367 of that report are devoted to a description of the proceeding, to stating some of the facts shown by the evidence before the Commission, and to a recital of the contentions advanced by the various parties to the case.

The remainder of the report, pages 367 to 399, is devoted almost exclusively to a question of tariff interpretation, *i. e.*, whether the tariffs then and presently in effect could be construed under Section 6 of the Act so as to make legal provision for the application of the proportional and reshipping rates to ex-barge traffic.[15a] After a very detailed discussion, Division 2 concluded that the tariffs did not provide for such an application, the ultimate finding of Division 2 reading as follows (R. 18, p. 381):

> "We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates,[16] and find that the schedules under suspension are not shown to be unlawful. An order will be entered vacating the order of suspension, and discontinuing this proceeding."

The finding just quoted did not purport to find reasonable a *change* in existing rates, although the investiga-

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[15a] As incidental to that discussion, the report of Division 2 enunciates some conclusions of fact regarding an alleged rate disturbance caused by the movement of ex-barge grain which were not renewed in the report of the Commission on reconsideration and consequently should be considered as withdrawn. This matter is dealt with under Point VIII, D hereof, pages 93 to 95, below.

[16] At the time the case was heard, the Interstate Commerce Act did not require barge lines to file all-water rates with the Commission. By the time the case was decided by Division 2, the Interstate Commerce Act had been amended by the Transportation Act of 1940 (54 Stat. L. 899) so as to subject common carriers by water, other than certain exempt classes, to regulation and so as to impose upon them the obligation of filing rates with the Commission. Such inbound rates on grain via barge were filed under the provisions of the statute on March 1, 1941 prior to the date of the finding quoted in the text above.

tion was instituted and heard under Section 15(7) of the Act on the assumption that a change was proposed. Rather, the sole premise for the finding entered in the report of July 31, 1941, was that the revision in tariffs under investigation made *no* change in the rates legally applicable to ex-barge traffic. If Division 2 had been right about that, there would have been no issue before the Commission under Sections 1, 2, and 3 of the Act.

Commissioner Alldredge dissented from the report of the majority of Division 2 as to its finding that no change was involved, and in his dissenting opinion expressed the view that the proposed change would result in unlawful rates. (R. 18, pp. 381-383)

Thereafter, petitions for reconsideration and reargument were presented to the Commission by appellees and others. (R. 48)

Reargument was denied, but on December 1, 1941, the Commission issued a report on reconsideration to which four commissioners out of the eleven, *i. e.*, Chairman Eastman and Commissioners Alldredge, Porter, and Johnson, dissented. (R. 47, *et seq.*)

The report of the majority on reconsideration described the prior report of Division 2 and, as the first matter to be treated, reversed the finding of Division 2 as to the non-application of the proportional and reshipping rates to ex-barge traffic under present tariffs, which was the whole predicate for the earlier report. (R. 51)

The report on reconsideration then recites the inbound rates on ex-barge grain as compared with the inbound rates on ex-rail grain, that recital being confined, however, to rates from Illinois origins in disregard of the fact that ex-barge grain from other shipping points such as St. Louis, Mo., Kansas City, Mo., etc., are equally involved.

The report then takes up a comparison of the barge-rail combinations with the all-rail combinations, and with the local rates from Chicago. Speaking of trunk-line territory, the report states (R. 52-3):

> "The barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule."

The report contains a number of findings making comparisons of the aggregate of the inbound and outbound rates. (R. 53)

The comparison indulged in by the Commission of the total charges on the inbound and outbound moves prevented consideration on their own merits of the separately stated reshipping and proportional rates which were the subject of the investigation. The theory on which the Commission predicated this approach to the case is stated later in the report in the following language (R. 54):

> "As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service."

The inbound charges, used to make up the totals embraced in the comparisons on which the Commission purported to predicate its ultimate conclusion, were not in issue before the Commission, and at the time of the hearing such inbound charges via water were not subject to the Commission's regulation.

The phase of the case which was the subject of more testimony than any other phase was the effect of the proposed changes upon the traffic and upon the protestants.

The Commission's findings on that phase of the case are embodied in a single sentence reading (R. 53-54):

> "The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators."

The Commission noted in general terms the allegations of the protestants that the proposed change would result in the discriminations, both as between shippers and as between connecting carriers. It found that the physical carriage beyond the reshipping point is the same for ex-barge as for ex-rail and ex-lake grain. (R. 54) It concluded that a difference in proportional and reshipping rates for similar physical services would not be discriminatory because, the majority said (R. 54):

> "* * * reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and may properly vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding. * * *."

Having disposed of the protestants' contentions on the grounds stated, the report of the majority goes on to observe (R. 54-5):

> "* * * in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations."

The ultimate conclusion in the report of the majority was expressed as follows (R. 55):

> "The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the

proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

"On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

"(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

"(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

"The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

"An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered."

INTEREST OF THE APPELLEES. THE CHICAGO ELEVATOR COMPANIES.

Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, appellees, are grain merchants operating public elevators at Chicago with a combined capacity of 25 million bushels.[17] (R. 1493-4) They were referred to as the Chicago elevator operators in the proceedings before the Commission and will be so referred to herein. The primary business of these appellees is to buy grain offered for sale on the spot market in Chicago, to store that grain awaiting sale, and subsequently to sell and to ship that grain for consumption in eastern territory to the extent permitted by the outbound rates. (R. 1500, 1502)

Little or no grain moves into and out of Chicago in a

[17] The total grain elevator capacity at Chicago, both public and private, is 50 million bushels. (R. 1494)

continuous through movement. Rather, the inbound service to Chicago comes to an end by delivery into an elevator, the title to the grain passing at that time to an elevator operator, and the outbound reshipment comes later as an independent transaction. (R. 1368, 1554) This is so to an identical degree in the case of ex-barge, ex-rail, and ex-lake grain. A table shown in Appendix I to the report of Division 2 of July 31, 1941 (R. 18; p. 383) shows that in the calendar years 1933 to 1939, inclusive, the total receipts at Chicago of corn, wheat, oats, and soybeans, divided 39,725,000 bushels via lake, 38,096,000 bushels via barge, and 812,743,000 bushels via rail.

The Chicago market thus provides a better *net* bid to the country shipper within reach of the barge service than it otherwise could, and the country shipper naturally accepts the best bid offered. (R. 1541-2) This has increased the volume of business merchandised through Chicago to the benefit of the appellees. (R. 1514-5, 1560, 1626) The success and profits of the appellees is directly predicated upon the volume of the grain they merchandise. (R. 1527, 1628)

In order to provide facilities for the accumulation of grain along the river and for transfer to barges, some of the appellees (Continental Grain Company and Norris Grain Company), as well as other interests, have invested large sums in elevators on the river banks. (R. 18, pp. 355; 1535-9) Some of these elevators have no facilities to ship via rail and were built on the river bank solely to serve the river movement. (R. 1536)

When grain is accumulated by an appellee in a river bank elevator, it pays for that grain the going delivered price at Chicago, less the cost of accumulation and transportation to Chicago via barge, and less a margin to cover the cost of operating the river bank elevator and a return on the investment therein. (R. 1540) The grain so accumu-

lated by a Chicago house in a river bank elevator is subsequently transported by it to Chicago via barge. The reshipment of such grain to the east from Chicago is definitely related to the outbound rate structure. (R. 1618) If a rate penalty of 8.5 cents is imposed on ex-barge grain, it will be a blockade. (R. 1515)

When appellees have accumulated or received ex-barge grain in their terminal elevators at Chicago, that grain must be sold in competition with ex-lake and ex-rail grain in the hands of other merchandisers. If ex-barge grain is deprived of the proportional and reshipping basis so that a rail reshipment could be made only on the basis of the local rates it cannot be sold against that competition to any destination which must be reached by rail service. (R. 1575-7)

Incidentally, the eastern lines, who were respondents before the Commission, now provide and propose to continue in the future ex-lake rates from Buffalo, New York, to the east, which are lower than local rates, and which are neither conditioned on the grain having had prior rail transportation, nor on the water rates up to Buffalo being filed with the Interstate Commerce Commission. (R. 1280; Exhibit 70 (R. (ex. vol.) p. 118)

The lack of a corresponding basis of reshipping rates on ex-river grain from Chicago would prevent the appellees from selling ex-barge grain for rail shipment in competition with Buffalo merchants. (R. 1590-1)

INTEREST OF APPELLEE, INLAND WATERWAYS CORPORATION.

Inland Waterways Corporation, operating the Federal Barge Line, sometimes referred to as Federal, performs a common carrier service by barge on various rivers, including the Mississippi between the Twin Cities

and New Orleans, the Missouri as far as Kansas City, and the Illinois and Chicago rivers to Chicago (R. 1209). It handles miscellaneous commodities as well as grain in tows of several barges each (R. 1219-20; 17). The transportation of bulk grain by Federal does not come within the exemption from regulation provided by Section 303(b) of Part III of the Interstate Commerce Act because of the inclusion of miscellaneous commodities with bulk grain in the same tow.

Federal transports *bulk grain* on port-to-port rates which are constructed on the basis of two mills per ton-mile (R. 1211). These rates are subject to various minima ranging from 140 to 1500 tons per shipment (R. 1211). These rates do not cover the service of loading the grain into or unloading the grain from the barges (R. 1211). If the loading or unloading is performed by Federal, additional charges are provided and assessed. (R. 1235)

Federal maintains terminals at points such as Kansas City, St. Louis, Peoria, and Chicago which are served by the railroads (R. 1221-2).

When Federal performs the service of transferring grain between barges and cars at its terminals, it utilizes a steam shovel. (R. 1221) However, all grain heretofore delivered at Chicago has been handled through grain elevators. (R. 1216, 1222-3)

Neither report of the Commission makes any mention of the grain which Federal has transported to Chicago.

Exhibit 63 (R. (ex. vol.) 101) shows the tonnages of bulk grain transported by Federal to Chicago from 1933 to 1939, inclusive, as follows: 4,657 tons in 1933; 45,772 tons in 1934; 32,367 tons in 1935; 35,220 tons in 1936; 52,900 tons in 1937; 5,843 tons in 1938; and 43,292 tons

in 1939. Collectively, these tonnages originated at Burlington, Iowa, East St. Louis, Havana, Kampville, Keithsburg, Lacon, Montezuma, Morris, Oquawka, Pekin, Peoria, and Peru, Illinois, Leavenworth, Kansas, and St. Louis and Kansas City, Mo. Shipments of *wheat* from Kansas City accounted for 40,312 tons in 1939.[18]

In recent years, Federal has handled little grain from origins on the Illinois waterways due to the fact that its rates are higher than the rates of other barge lines operating from origins on that waterway into Chicago. (R. 1240-1)

At the time the case was heard by the Commission, in December, 1939. and January, 1940, Federal's rates on bulk grain were not filed with the Commission, and the Commission had no jurisdiction over port-to-port transportation by water carriers in the absence of a common arrangement for through carriage. (R. 1212, 1224)

After the hearings, but before the decision by Division 2, the Transportation Act of 1940 was enacted (Sept. 18, 1940). That act added Part III to the Interstate Commerce Act and subjected port-to-port transportation by water carriers to regulation. It also brought common carriers by water within the protection of Section 3(4) of Part I which prohibits discriminations by railroads between connecting lines. In the report of the Commission on reconsideration, official notice was taken of the fact that Federal has filed its port-to-port rates as required by Part III. (R. 49)

The general freight agent of Federal expressed the opinion that Federal would go out of the bulk grain traffic if the suspended tariff were approved. (R. 1237)

The affidavit of the general traffic manager of Federal filed in the lower court shows that it competes with paral-

[18] At a weight per bushel for wheat of 60 pounds (R. 1254-5) 40,312 tons is the equivalent of 1,342,390 bushels.

leling railroads for the transportation of bulk grain from Kansas City and other origins to Chicago; that it transported 30,958 tons of such grain to Chicago in 1940 and 37,093 tons in 1941 in tows which also contain freight other than bulk commodities; and that grain heretofore transported by Federal to Chicago has been reshipped to eastern destination on proportional and reshipping rates. That affidavit further shows, if the proposed change becomes effective, that it will be impracticable to ship ex-barge grain from Chicago to eastern destinations via railroad; that no shipper will use the service of Federal in the transportation of bulk grain to Chicago if either such shipper or his vendee desires to ship such grain via railroad to a destination east of Chicago; that under these circumstances there will be less incentive for shippers to use the service of the Federal to Chicago and a corresponding greater incentive to use the service of the railroads with which Federal competes; and that Federal will not secure for transportation to Chicago as much grain as it would secure if the same rates are applied upon a reshipment of ex-barge grain as are applied on a reshipment of ex-rail or ex-lake grain. (R. 1707-12)

In the tariff provisions which the Commission approved as lawful, there is one exception to the application of the proportional and reshipping rates to ex-barge grain. That exception provides that the trans-Mississippi rate will apply from Chicago to Central territory destinations and the Note 20 proportional and reshipping rate to trunk-line and New England destinations on the reshipment of grain which has moved via barge from Kansas City, Mo., to Chicago, Ill., under rates which Federal had published and filed with the Commission prior to the start of the case.[19]

[19] Item 3632 of Federal Barge Lines Freight Tariff, No. 31-J, I.C.C. No. 148 and reissues thereof. (Ex. 1, p. 7 for the trans-Mississippi application; p. 22 for the Note 20 application; R. (ex. vol.) pp. 7, 22)

The rates published in the item referred to are confined to package grain or grain products subject to the same minimum weight as is provided in connection with a railroad carload movement. (R. 1214) Alfalfa meal, a grain product, has moved on these rates. (R. 1230)

EVIDENCE AS TO THE EFFECT OF THE PROPOSED CHANGE ON THE MOVEMENT OF EX-BARGE GRAIN.

As to the Chicago elevator making a cash sale of ex-river grain into the eastern marketing area which requires rail service to reach it, the Commission found (R. 53):

> "The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators."

The District Court found as a fact that there is no evidence in the record to support the foregoing finding. (R. 1670-1, Finding No. 18) Additionally, the District Court found as a fact upon the undisputed evidence that ex-barge grain would be exclusively confined to reshipment from Chicago via lake if the proposed change were made effective and recited in some detail the facts disclosed by the evidence which led it to that conclusion. (R. 1671)

The appellants do not assert that any of the facts set forth in Finding No. 18 of the District Court is contrary to the evidence. Consequently, it would seem to be unnecessary to provide references to the record in support of the fact as found by the District Court. However, in the interest of completeness, the evidence on this point is summarized with complete record references in Appendix "B" hereto. (*Post* p. 117)

The eastern railroad appellants assert (Br. 79) that the finding of the Commission is supported by the testi-

mony of a witness who stated (R. 267-9) that the matter of supply and demand would determine whether ex-barge grain would be reshipped on the basis of the local rates. An examination of the record indicates a complete lack of any definite statement as to the likelihood of a movement of ex-barge grain on local rates. The witness in question qualified as to railroad experience (R. 214) but did not qualify as knowing anything about the grain business. All of his answers on this point were evasive in the sense that they were "maybe yes" and "maybe no". For example he said (R. 267-8):

> "If the question of supply and demand is there it [ex-barge grain] might move water—or might move rail but it is only natural to assume if it is export grain or grain that is going far into trunk-line territory without transit within the nearby CFA territory where it may be milled, it will go by water, but don't overlook this, Mr. Belnap, that the large part of the grain that we handle out of Chicago is for transit intermediate to the seaboard, which they cannot get via lake."

The subsequent statements of the witnesses were directed to the entire movement of grain east of Chicago and to the movement of ex-barge grain in rare instances only. The following questions and answers are illustrative (R. 269):

> "Q. That is, do you think you have just as much likelihood of getting for rail movement this ex-barge grain if you increase the rates east of Chicago by 8½ cents?
>
> • • • •
>
> "A. On barge traffic inbound we might lose. Maybe there won't be as much barge traffic.
>
> "Q. Whatever it is it won't go by rail?
>
> "A. Some of it might.
>
> "Q. Do you think it will increase it?
>
> "A. No, it won't increase it. I don't think it will increase the movement of barge traffic.

"Q. Do you think it will reduce it?
"A. It might.
"Q. Have you any doubt about it?
"A. It might reduce the barge traffic, but to the same point it would probably increase our movement of traffic that came in by rail and out by rail, in all probability.

• • • • •

"A. What we may lose to the barge we will at least pick up from the rail movement east of Chicago.
"Q. You hope to get the additional movement into Chicago by rail?
"A. Yes."

The same witness expressed the hope of the eastern lines that "the effect will be of additional all-rail grain from this Illinois territory" (R. 265), and when asked if the proposal was made in a belief that it would induce the reshipment of ex-barge grain via rail (R. 267), answered, "No."

Summary of Argument.

The whole attack on the order of the Commission involves pure questions of law, *i. e.*, whether the matters considered by the Commission were those which it was legally authorized to consider in applying the statutory standards; and whether there is any evidence to support certain preliminary findings on which the Commission predicated its ultimate conclusion. This Court is not asked to determine independently what would constitute lawful rates under the facts and the statute. This Court is asked to construe the governing statutes. It is readily agreed that the injunction should not have issued if this Court finds as a matter of law (a) that the Commission was authorized to predicate its ultimate conclusion on the matters considered by it to be controlling in the premises;

(b) that the preliminary findings of the Commission are supported by the evidence; and (c) that the matters considered by the Commission as controlling are reasonably related to the discharge of its administrative function.

The case before the Commission involved a proposed change in rates by eastern railroads which would discriminate against connecting barge lines in favor of connecting lake lines and railroads and which would destroy the equality of reshipping rates heretofore enjoyed by shippers of ex-barge, ex-lake, and ex-rail grain. Only outbound rates of eastern railroads were under investigation. The transportation services performed under such rates are, in fact, separate transactions wholly independent of the inbound hauls. Producers, sellers, and shippers of grain from country stations to reshipping points are alone concerned with the level of the inbound rates.

In finding that the proposed change is just, reasonable, and not shown to be otherwise unlawful, the Commission did not proceed within the limits of its statutory authority in the following respects and for the following reasons:

(1) The Commission concluded that a proposed advance of 8.5 cents in the rate to be applied on a reshipment of ex-barge grain from Chicago to New York would be reasonable on the ground that the through rate resulting from combining the increased outbound rate via railroad with the existing inbound rate via barge appeared to be reasonable. That action of the Commission is tantamount to making the reasonableness of the outbound rate, which the Pennsylvania Railroad is entitled to charge for its own services from Chicago to New York, depend on what some other carrier sees fit to charge for bringing the traffic to the point where the services of the Pennsylvania Railroad begin. That does not constitute a correct application of the statu-

tory standard. Plainly, the Commission would not be authorized to force the continuance of a non-remunerative reshipping rate on the ground that the through charge composed of an excessive inbound rate and such non-remunerative reshipping rate is just and reasonable. The converse is equally true. Whether a separately established reshipping rate is non-remunerative, or is reasonable, or is in excess of a maximum reasonable rate must be determined independently of the inbound rates in which neither the shipper nor the carrier from the reshipping point has any interest.

(2) Section 2 of the Act prohibits as unjustly discriminatory the charging of a different rate to one shipper than to another when such rates are applied to like and contemporaneous services in the transportation of a like kind of property under substantially similar circumstances and conditions. The Commission finds that this section is not violated by the proposal on the ground that differences in the matter of inbound rates, relative lengths of the inbound hauls, and in the nature of the inbound services (whether via river, lake, or rail) justify a difference in the outbound reshipping rates. This is directly contrary to the meaning heretofore accorded Section 2 by the Commission, by this Court, and by the English courts construing a similar provision in the English statutes on which Section 2 is directly modeled. The matters which the Commission is legally entitled to consider in applying Section 2 are limited to those which relate directly to the particular service for which the rates in issue apply, and do not embrace circumstances which arise either before the service of the carrier begins or after it is terminated.

(3) The Commission declined to find that the proposal would violate Section 3(4) which prohibits discrimination

in rates by railroads as between connecting carriers, such connecting carriers, including, by definition, common carriers by water subject to Part III of the Act. To the extent that the Commission treated as non-discriminatory a difference in rates as between traffic brought in by barge lines, on the one hand, and traffic brought in by lake lines and by railroads, on the other hand, because of differences incident to the inbound services, carriers, and rates, the Commission misconstrued and misapplied the statute, akin to the error committed in applying Section 2.

Even if the proposed rates are otherwise reasonable, they are nevertheless unlawful if discriminatory.

To treat the difference between inbound service via barge, on the one hand, and inbound service via lake, steamer, or by railroad, on the other, as controlling upon the relation of the outbound rates, not only exceeds the bounds of administrative discretion, but is in contravention of the National Transportation Policy as declared by Congress in the Transportation Act of 1940.

A barge line is entitled to the protection against the discrimination in rates provided by Section 3(4), even though it and the railroad guilty of the discrimination have not established through routes by common arrangement. To hold differently circumscribes the application of Section 3(4) in a manner not intended by Congress, and treats the 1940 amendment of that section as mere surplusage. This is so, because all common carriers by water which participated with rail carriers in through routes by common arrangement were protected by Section 3(4) as it read prior to the 1940 amendment, which added "common carriers by water subject to part III" to the connecting lines protected against discrimination in rates. That amendment would add nothing to the section unless read as including

water carriers who do not participate in through routes by common arrangement.

(4) The existing proportional and reshipping rates on ex-barge traffic are proportional rates of the character defined and authorized in Section 6(11) of the Act. The Commission states that reasonable proportional rates lower than local rates might be prescribed on ex-barge traffic in a proper proceeding but could not be determined on the present record. Under Section 15(7), the burden of proof as to what would constitute reasonable rates on the reshipment of ex-barge grain was upon the eastern railroads, the respondents before the Commission. If the record in the instant case is inadequate, that burden of proof was not borne. In that situation the Commission exceeded its authority when it found that the proposed rates are shown to be just and reasonable.

(5) Under Section 15a of the Act, Congress directed the Commission, in the exercise of its power to prescribe just and reasonable rates, to consider, among other factors, the effect of rates on the movement of the traffic by the carriers for which the rates are prescribed. The Commission finds that the proposed rates would not be so high as to make impossible the reshipment of ex-barge grain from Chicago via railroad and that the only effect would be to reduce the profits of the Chicago elevator companies. This finding is not supported by any evidence and is directly contrary to all the evidence on the point.

(6) The order is not supported by essential basic findings sufficient to disclose a reasonable basis for the order and the proper application of any statutory standard. The findings which are contained in the reports are insufficient, even if otherwise valid, for the following reasons:

(a) The detail of the rate structure touches no issue in

the case since the approved proposal is not predicated on the detail of that structure, but is offered only as a means of preventing the reshipment of ex-barge grain from Chicago via rail in the hope of making the inbound barge services less usable.

(b) The finding as to the reasonableness of the local rates, as such, is irrelevant since the case involved the reasonableness of rates applied on a reshipment of grain rather than the reasonableness of local rates, as such. Furthermore, no finding as to reasonableness can cure the discriminatory character of the proposed rates.

(c) The findings of the report of Division 2 relating to an alleged disruption of the rate structure were not restated in the report of the Commission on reconsideration and must be considered as withdrawn.

(d) The alleged disrupting effect of the barge movement means only that the low inbound rates via barge to Chicago have induced competitive reductions in the inbound rail rates maintained by western carriers. That effect cannot serve to justify the proposed rate penalty east of Chicago.

(e) The fact that low inbound barge rates from some origins added to existing proportional rates from Chicago produce an aggregate less than the local rates from Chicago (referred to by the Commission as in contravention of the Fourth Section rule) does not support an order approving as reasonable the local rates on all ex-barge grain. In the first place, the full local basis on ex-barge grain is not required by a combination rate which will clear the Chicago local rates. Second, the rates of the appellee, Inland Waterways Corporation, from Kansas City plus the outbound proportionals via railroad invariably exceed the local rates from Chicago, so that this finding means nothing as applied to reshipping rates on ex-barge

grain from Kansas City in which this appellee is particularly interested. Third, if the present outbound proportionals lower than local rates are proper, aside from their application to ex-barge traffic, the advent of the low-rated barge service from Illinois origins could not make improper what was theretofore a proper railroad rate. Fourth, the ex-lake grain for which the Commission approves the existing proportional and reshipping rates likewise moves on a combination of lake and rail rates, less than the local rates from Chicago. Fifth, in amending the Fourth Section in 1940, Congress specifically provided that no railroad rate need be changed by reason of extending that section to cover a combination through rate composed of a port-to-port water rate plus the rate of a rail carrier. Sixth, the Fourth Section, no matter how construed and applied, cannot serve as a cloak for prohibited discriminations.

(f) The general finding that outbound proportional and reshipping rates may differ because of differences incident to the inbound services, carriers, and rates is insufficient, even if these differences are entitled to consideration, in the absence of findings which predicate a particular difference in outbound reshipping rates on particular circumstances incident to the inbound hauls.

As to the jurisdiction of the District Court by reason of the character of the order, the parties complaining, and the parties reached by the decree:

The assailed order is of a character which can be reached by the injunctive process because it is the equivalent of an order dismissing a complaint upon a misapplication and misconstruction of the governing statute. When the Commission acts under Section 15(7) after full hearing, it must issue such mandatory orders as are required when

the statutory standards of lawfulness are applied to the facts shown by the evidence and entitled to its consideration.

Inland Waterways Corporation has an interest and standing which entitled it to bring and maintain its suit in the District Court because Section 3(4) confers a right upon it to have the Commission forbid conduct by the eastern railroads of which this appellee complains.

The eastern railroads were proper defendants in the District Court because the only relief sought against them was an injunction forbidding action under the authority of an illegal order. The decree entered by the District Court did not otherwise interfere with their right to initiate rates.

ARGUMENT.

I. The District Court had jurisdiction upon complaint of the appellees to enjoin the order because predicated on errors of law.

A. THE ASSAILED ORDER IS OF THE CHARACTER WHICH CAN BE REACHED BY THE INJUNCTIVE PROCESS.

The Commission entered its order pursuant to the power conferred upon it by the Section 15(1) of the Act to determine and fix reasonable, non-discriminatory, and non-prejudicial rates for common carriers by railroad. The power so conferred can be exercised in three types of proceedings, *i. e.*, (1) upon a formal complaint brought under Section 13(1) of the Act, assailing as unlawful some existing rate; (2) upon an investigation instituted by the Commission on its own motion as to an existing rate, this under Section 13(2) of the Act; or (3) upon suspension of a proposed change in an existing rate and a subsequent investigation (full hearing) under Section 15(7) of the Act.

The order in this case was entered by the Commission in a proceeding of the third class. The power of the Commission to enter an order directed to rates is precisely the same in all three types of proceedings, and the standards by which the lawfulness of rates must be determined are the same in one as in the others.

The appellees in this case are in precisely the same situation as if the proposed change had become effective, the appellees had then complained thereof by formal complaint, and the Commission had dismissed that complaint.

If it be assumed, as the appellees contend, that the Commission rested its ultimate conclusion on an error of law, then it is clear that the appellees are without relief unless it can be secured in this case. Obviously, it would be futile to prosecute a formal complaint before the Commission, since it must be assumed that in any new proceeding the Commission would construe the statute precisely the same as it has done in this proceeding and would arrive at the same ultimate conclusions. The character of the proceeding can have no influence on the administrative judgment as to what constitutes a lawful rate.

In *Procter & Gamble Co.* v. *United States*, 225 U. S. 282, and for many years thereafter, this Court consistently held that the courts were without power to review an order entered by the Commission in any case where the order was negative in form and in substance. However, the *Procter & Gamble Co.* case was overruled in *Rochester Telephone Corp.* v. *United States* (1939), 307 U. S. 125. In that case this Court concluded that the courts do have power to review any order in which the plaintiff urges "errors of law outside the Commission's final say-so," even though the order sought to be reviewed does not forbid or compel conduct on the part of the persons seeking review but is attacked because it does not forbid or compel conduct by a third person, saying at page 142:

> "An action before the Interstate Commerce Commission is akin to an inclusive equity suit in which all relevant claims are adjusted."

Counsel for the western railroads make a particular point as to the character of the order assailed. They argue that an initial suspension of a proposed change is purely discretionary so that a failure to suspend is

not subject to judicial review. Appellees have no quarrel with that contention. Western carriers then argue that the order here assailed is simply the equivalent of a refusal to suspend so that the administrative remedies of the appellees are not exhausted and there is no disposition of the case on the merits unless and until the appellees appeal to the Commission by way of formal complaint and that compiaint is dismissed. That is not true.

In so arguing, the western carriers overlook two important differences between a refusal to suspend in the first instance and the discontinuance of a suspension proceeding after full hearing. The first important difference is the full hearing. Such a hearing is provided so that all pertinent questions may be litigated and determined. Such a hearing would be a vain act if the Commission had it within its discretion to discontinue the proceeding after hearing even though the change in rates under investigation was in direct contravention of the statute.

The second important difference relates to the character of the power conferred. The initial suspension is necessarily discretionary since it is required without hearing and, therefore, should be ordered only if the Commission is reasonably convinced that the question involved is substantial and should be investigated at a hearing. The initial action of the Commission is not a determination as to the lawfulness of rate; it is only a determination that a proper case is presented for investigation by the method provided by Section 15(7). A refusal to suspend in the first instance does not purport to be an adjudication of rights claimed under the statute.

However, once the suspension is ordered and the investigation is instituted, Section 15(7) requires a "full

hearing." The section further provides that after that full hearing, whether completed before or after the change goes into effect "the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective." Here is a direct requirement that the Commission dispose of an investigation proceeding after full hearing just as if the issues involved had been presented by way of a formal complaint. The phrase "may make such order" must be read as mandatory and not as if the Commission had discretion to discontinue a proceeding without order, even though the proposed change were clearly disclosed to be in contravention of the governing statute. The word, "may" should be read as "shall" in recognition of the accepted canon of statutory construction that permissive words directed to courts or officers are imperative in those cases in which the public or individuals have a lawful claim to, or interest in, the exercise of the power so conferred.

The rule just stated was enunciated by this Court in the oft cited cases of *Mason et al.* v. *Fearson*, 50 U. S. 248, 259, and *Supervisors Rock Island Co.* v. *United States, ex rel. State Bank*, 71 U. S. 435, 445, 447. The same rule was applied in *Winsor Coal Co.* v. *Chicago & A. R. Co.*, 52 Fed. 716, which involved the construction of a state regulatory statute very similar to the Interstate Commerce Act and in *Arizona Corp. Commission* v. *Heralds of Liberty*, 17 Ariz. 462, 154 Pac. 202, 205, involving the powers of a state corporation commission.

The reference in the report on reconsideration to the possibility in a proper proceeding of prescribing proportional rates on ex-barge traffic lower than local rates (R. 54-5) is without significance insofar as the point under discussion is concerned. Presumably, the Commission re-

ferred to a proceeding in which appellees by formal complaint would request the exercise of the authority conferred by Section 6(11) of the Act. The issue in such a complaint case would be as to the reasonableness of such proportional rates. That, however, is one of the very issues in this case. Consequently, in the words of Mr. Justice Cardozo in *United States* v. *Chicago, M. St. P. & P. R. R. Co.*, 294 U. S. 499, 510:

> "This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come."

Furthermore, the Commission in this case disposed of issues under Sections 2 and 3(4) of the Act which would not be present in a formal complaint brought under Section 6(11) (b). Appellees are entitled to have those sections correctly construed and applied in this case. There is no reason why they should be compelled to begin another proceeding if the Commission should have acted in this case so as to prevent action by the eastern railroads which would be in derogation of their statutory rights.

B. THE INLAND WATERWAYS CORPORATION HAS AN INTEREST AND STANDING WHICH ENTITLED IT TO BRING AND MAINTAIN ITS SUIT IN THE DISTRICT COURT.

Inland Waterways Corporation brought its action in the District Court because it had been deprived of a correct application of Section 3(4) in the case before the Commission. Unless the injunctive process is available, appellee is without a remedy in the premises, no matter how arbitrary or capricious may have been the action of the Commission.

This appellee has a right to treatment from eastern

lines which will be non-discriminatory as compared with the treatment accorded other connecting lines. That right is enforceable by the Interstate Commerce Commission in a proceeding of the character in which was entered the order here assailed. If this appellee cannot use the injunctive process to reach an order by which it has been denied its statutory right because of an erroneous construction of the statute by which granted, the Commission will be free to apply its own standards, rather than those prescribed by the Congress.

In *Mitchell* v. *United States*, 313 U. S. 80, was involved an order entered by the Commission dismissing a complaint brought by a member of the colored race, complaining of discrimination in passenger accommodations. The Commission challenged the right of Mitchell to bring the suit. Upon that issue, this Court, speaking through Mr. Chief Justice Hughes, said (pp. 92-3):

> "Appellant was an aggrieved party and the negative form of the order is not controlling. * * * He presents the question of whether the Act does forbid the conduct of which he complains. * * *
>
> "The District Court had jurisdiction to review the action of the Commission and the question on that review was whether that action was in accordance with the applicable law."

The case of *Sprunt & Son* v. *United States*, 281 U. S. 249, and the other cases cited by appellants, are wholly inapposite since this appellee does not occupy the position of one who has previously received a preference, which preference is removed by the assailed order. Appellee, of course, receives no preference through the application of the proportionals to all traffic alike, but is merely thereby accorded equal treatment, and it only seeks to preserve this equality of treatment in comparison with other connecting lines, which equality is guaranteed to it by the

statute. The parties herein who stand in the same shoes as the appellant in the *Sprunt* case are the western rail lines, who are favored by the eastern railroads in the proposed tariffs, and who intervene in this case to preserve their preferential standing.

That a carrier does have the standing to maintain a suit such as this, regardless of the decision on the merits of the case, follows from the many cases in which orders of the Commission under this same Section 3(4) have been attacked in the courts. *Chicago, I. & L. R. Co.* v. *United States*, 270 U. S. 287. And in *New York & N. Rg. Co.* v. *New York & N. E. R. Co.*, 50 Fed. 867, a carrier successfully maintained a suit to enforce an order of the Commission granting relief from discrimination under Section 3(4) of the Act.

It is axiomatic that every right has its remedy, and, in case the Commission erroneously construes the statute, the only remedy of this appellee is a suit of this nature. Whether appellee can be deprived of its right to equality of treatment with other connecting lines upon the construction given the statute by the Commission is the issue in this case and the argument of the appellants on this point merely begs the question.

C. THE RAILROADS WERE PROPER DEFENDANTS IN THE DISTRICT COURT.

The decree of the District Court (R. 1677) enjoined the eastern railroad appellants "from acting upon the authority of the aforesaid order of the Commission, but said defendants are not restrained or enjoined from filing or posting any rates or tariffs, other than upon the authority of the aforesaid order." Where the injunction does no more than forbid action under the authority of an illegal order, those to whom authority is conveyed by the order

may be reached by an injunction even though the order is only permissive. It was so held in the *Chicago Junction case, Baltimore & O. R. Co.* v. *United States*, 264 U. S. 258, 269-70.

It is to be emphasized that the eastern lines are not enjoined from refiling the proposed change upon statutory notice at any time they so desire. The only thing forbidden to them is making effective the change *upon the authority of an illegal order*. They have no right to complain of that action by the District Court.

D. THE QUESTIONS PRESENTED IN THIS SUIT ARE QUESTIONS OF LAW, AND THEIR DETERMINATION BY THE COURT DOES NOT TRANSGRESS ON THE ADMINISTRATIVE DOMAIN.

The matter complained of is an order of the Commission which finds that a proposed change in rates is just and reasonable and not shown to be unlawful in violation of the Act. We appreciate that such an order is not subject to attack in court upon any question which Congress has committed to the Commission for determination, so long as the Commission acts within the powers conferred upon it by the statute. Consequently, appellees raise no question as to the weight to be given the evidence or as to the conclusions to be drawn therefrom, except to insist that certain evidence is legally irrelevant under a proper construction of the statute, and that certain findings are without any support in the evidence. Laying aside the exceptions which involve questions of law and not questions of administrative discretion, we accept as final all findings by the Commission which call for an expert and informed judgment in the field of rate-making, a field in which Congress has made the Commission, and not the courts, supreme.

This Court on many occasions has acknowledged the

propriety of injunctive relief where the administrative body committed errors of law similar to those of which we here complain. Without going into detail, we note that orders of the Commission were set aside in the following cases for reasons identical in principle with those on which appellees rely:

Lack of evidence. In *Florida E. C. R. Co.* v. *United States*, 234 U. S. 167, 186-8, the order was set aside because it was wholly without support in the evidence as to the rates of the appellant.

Lack of essential findings. In *Florida* v. *United States*, 282 U. S. 194, 215, the order was set aside because of a lack of findings as to basic or jurisdictional facts conditioning the power exercised. In *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 504, an order prohibiting a proposed reduction in rates on coal because of a supposed disturbance of the general rate level was enjoined due to the absence of findings specifying the respect in which the proposed rates were unlawful. In *United States* v. *Baltimore & O. R. Co.*, 293 U. S. 454, 464, an order of the Commission requiring a change in reverse gears for locomotives was set aside because of a lack of findings that the gears ordered displaced occasioned peril to life or limb. In *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, the order was set aside because it lacked findings sufficient to show that the statutory standards had been properly applied.

Erroneous meaning accorded to words in the statute. In *United States* v. *Pennsylvania R. Co.*, 242 U. S. 208, 229, and in *Baltimore & O. R. Co.* v. *United States*, 277 U. S. 291, 299, 300, the orders were set aside because the Commission erroneously construed the word "practice" in

Section 15(1) of the Act. In *Interstate Commerce Commission* v. *Oregon-Wash. R. & Nav. Co.*, 288 U. S. 14, the order was enjoined because the Commission erroneously misconstrued the phrase "to extend its line" in Section 1(21) of the Act. In *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, the order was set aside because the Commission gave an erroneous meaning to the words "*bona fide* operations" of Section 206(a) as applied to commodities transported by a motor carrier. In *United States* v. *New York Central R. Co.*, 263 U. S. 603, an order requiring railroads to issue interchangeable mileage coupon tickets was set aside on the ground that the Commission had given the statute a broader application than that to which it was entitled according to its terms. In *United States* v. *Missouri P. R. Co.*, 278 U. S. 269, an order of the Commission establishing through rates which short-hauled the Missouri Pacific Railroad was set aside because the Commission had misconstrued Section 15(4) of the Act as applicable only in favor of the carrier in possession of the property. In *Texas & P.* v. *United States*, 289 U. S. 627, an order entered under Section 3(1) of the Act was set aside because the Commission erroneously considered a port of transshipment as if embraced within the word "locality" as used in that section.[19a]

Abuse of discretion. In *Interstate Commerce Commission* v. *Northern P. R. Co.*, 216 U. S. 538, an order establishing through routes and joint rates was set aside on the ground that the matter was not one for the Commission's discretion where it was shown, according to proper legal principles, that a reasonable and satisfactory through route existed. In *Mitchell* v. *United States*, 313 U. S. 80, an order dismissing the complaint of a colored passenger directed against discrimination in the matter of accommodations furnished was set aside on the ground that the

[19a] Since that case Section 3(1) has been amended so as to include a port.

Commission had overstepped the bounds of administrative or expert judgment in approving a discrimination predicated on the fact that the complainant was a Negro and that there were practical difficulties in providing the same accommodations for Negroes as for white persons.

Order predicated upon a consideration of facts which were not relevant as a matter of law. In *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, an order directed to the reasonableness of rates under Section 1 was enjoined because predicated on economic, rather than transportation, conditions. In *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 242, the order prohibited an elevation allowance when grain was treated, weighed, inspected, or mixed at the elevator of the one receiving the allowance. The Commission found such allowance unduly preferential by reason of the commercial advantages which thereby accrued to the elevator operator. That order was enjoined on the ground that such circumstances were not within those which the Commission was legally entitled to consider in determining whether the alleged preference was undue in violation of the statute. In *Anchor Coal Co.* v. *United States*, 25 F. (2d) 462, 471, an order entered in an investigation and suspension proceeding prohibiting a reduction in rates was enjoined on the ground that the Commission had exceeded its powers by taking into consideration industrial conditions and economic advantages and then endeavoring to offset them through an adjustment in rates. In *Interstate Commerce Commission* v. *Stickney*, 215 U. S. 98, an order requiring a reduction in a separately stated terminal charge was enjoined on the ground that the Commission had not treated with the charge in issue independently of other charges, but had predicated its order upon a consideration of the reasonableness of the through rate

produced by combining the terminal charge with prior charges for line-haul transportation. In *Central Railroad Co. of New Jersey* v. *United States*, 257 U. S. 247, an order entered under Section 3 of the Act directed to transit arrangements was enjoined because the Commission treated the act of the appellant carriers in joining in through routes and joint rates with connecting lines on whose latter lines preferential transit arrangements were maintained, as the equivalent of the appellants being responsible for the preferential arrangements. Mr. Justice Brandeis, who wrote the opinion in that case, characterized it in his dissenting opinion in *St. Louis & O'Fallon R. Co.* v. *United States*, 279 U. S. 461, 493, as one in which the Commission's order was set aside because it took into consideration facts which could not legally influence its judgment. In *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, an order denying a certificate of public convenience and necessity to a motor carrier was enjoined because the Commission predicated its finding as to *bona fide* operations upon facts as to the regularity and relative frequency of the transportation of particular commodities, a matter which this Court held was not controlling. In *Ann Arbor R. Co.* v. *United States*, 281 U. S. 658, 666, an order of the Commission requiring a reduction in rates was enjoined on the ground that "it is manifest that the Commission was testing the reasonableness and validity of the rates by considerations not applicable under those sections * * *." (Sections 1 and 3 of the Act)

Failure to consider facts which were relevant as a matter of law. The general principle that an order of the Commission is invalid if it fails to act within the statutory authority is equally illustrated by cases in which the Commission has declined to give consideration to matters

which it was legally obligated to consider. In *Interstate Commerce Commission* v. *Alabama M. R. Co.*, 168 U. S. 144, the order was set aside because the Commission had refused to consider carrier competition as a distinguishing circumstance in applying Sections 3 and 4 of the Act. In *Brimstone R. & C. Co.* v. *United States*, 276 U. S. 104 117, an order fixing divisions of rates as between connecting carriers was set aside on the ground that the Commission had not given consideration to matters legally entitled to consideration under the governing statute. In *St. Louis & O'Fallon R. Co.* v. *United States*, 279 U. S. 461, 487, an order involving a question of valuation was set aside on the ground that the Commission had failed to consider certain elements of value which, as a matter of law, it should have considered.

Whenever an administrative body commits errors of law of the character exemplified in the foregoing cases, which errors are identical in principle with those of which appellees here complain, it is plain that "the commission in arriving at its determination departed from the applicable rules of law" (*Shields* v. *Utah, Idaho Central R. Co.*, 305 U. S. 177, 185), that the administrative body did not apply the statute in a "just and reasoned manner" (*Gray* v. *Powell*, 314 U. S. 402, 411), and that there is no "rational basis for the conclusions approved by the administrative body." (*Rochester Telephone Corp.* v. *U. S.*, 307 U. S. 125, 146)

Cases distinguished.

The cases dealing with the scope of judicial review, on which appellants rely, are not in point, since they did not involve errors of law similar to those involved in this case.

For example in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, this Court, on the ground of ad-

ministrative finality sustained an order entered in *Chicago and Wisconsin Points Proportional Rates*, 10 M.C.C. 555, 17 M.C.C. 573, condemning as discriminatory under Section 216(d) of Part II of the Act (49 U.S.C., Sec. 316(d)) a different rate on less than truckload traffic received from freight forwarding companies than on freight received from other shippers at the same point. The Commission predicated its order on a finding that there was no dissimilarity in the conditions of transportation. The Commission confined its consideration to those circumstances which related *directly* to the physical services for which the differing rates applied. Neither the Commission nor this Court gave any consideration to differences in circumstances which occurred prior to the transportation for which the rates in issue applied. That was a fact case in every respect and did not involve the misconstruction of the statute, of which appellees here complain. If the Commission had construed the statute the same in this case as in that case, appellees in the instant case would have prevailed before the Commission.

In *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, the issues were primarily under Section 3(1) (*Grain Case Modifications* (1939), 231 I. C. C. 793, 794), and the physical services to which applied the rates and practices alleged to be unduly preferential were different from the physical services to which applied the rates and practices alleged to be unduly prejudicial. This is because the temporary stop and reshipment involved wholly different intermediate points. Whether this difference in the physical services was a substantial difference, within the meaning of Section 2, was within the competence of the Commission to decide.

Additionally, the Commission found there was a basic difference in the forms of the transits taken.

There was no claim as to lack of proof to support these findings as to the differences, nor was there any claim that the differences relied upon by the Commission, which related directly to the services involved, were beyond its authority to consider. The appellants in that case contended that when the facts relied upon by the Commission were considered, the ultimate conclusion should have been different than that announced by the Commission. This Court properly held that such a question is beyond the scope of judicial review. The case here is different in that it involves a lack of proof and also involves the contention that the Commission predicated its ultimate determination on matters which it had no right to consider under the statutes as properly construed.

II. The reasonableness of a separately stated proportional and reshipping rate must be tested independently and without merging it with prior charges.

Section 1(5)(a) of the Act provides that *all* charges made for any service rendered in the transportation of property shall be just and reasonable and every unjust or unreasonable charge for such service or *any part thereof* is prohibited and declared to be unlawful.

Section 6(1) of the Act requires carriers to publish and file with the Commission the *separately established rates and charges* applied by them to through transportation.

The report of the Commission on reconsideration did not deal with the separately established proportional and reshipping rates, as applied to ex-barge grain, on their own merits. On the contrary, the rate comparisons found in the report of the Commission (R. 52-3) are of the combined barge-rail combinations with the all-rail combinations. The Commission noted the differences between

such combinations and concluded that a barge-rail combination *higher* than the all-rail combination met the test of reasonableness. In testing the reasonableness of the rates in issue by the combinations which they produce, the Commission exceeded its statutory authority.

In *Interstate Commerce Commission* v. *Stickney*, 215 U. S. 98, 105, 109, was involved an order of the Commission requiring certain railroads to reduce from $2 to $1 per car their terminal charges for transporting livestock to the Union Stock Yards at Chicago. That terminal charge was a factor used to determine the through rate which the shipper should pay. In that case, the Commission did not treat the existing terminal factor of $2 per car on its own merits, but rather, combined that factor with the prior line-haul charges into Chicago and treated only with the reasonableness of the aggregate. This Court held such an approach to the issue was beyond the power of the Commission, and accordingly the order was enjoined, this Court saying at page 105:

> "If the terminal charge be, in and of itself, just and reasonable, it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes a total charge to the shipper unreasonable."

To make plain the principle for which we are contending, let it be assumed that the Pennsylvania Railroad had established the reasonableness of the proposed change, if the separately established charge was considered on its own merits. Further, assume that the Commission had, nevertheless, declined to permit any increase therein on the ground that the increased separate rate of the Pennsylvania, when added to an unregulated barge rate of Mechling from Morris, or when added to the inbound rail

rate of the Rock Island Railroad from the same origin, or when added to the rate which happened to be maintained at the time via lake steamer from Duluth, would produce an unreasonable total charge. In such a situation, it is inconceivable that this Court would permit the Pennsylvania to be deprived of a rate fair and reasonable to it, considering only the services rendered by it east of Chicago.

There is no possible interrelation between the inbound barge rates charged by Mechling and the reshipping rate charged by the Pennsylvania. If we were to assume that such an interrelation does exist, then an overnight[20] change in the Mechling inbound rate would apparently make the separately established outbound rate of the Pennsylvania either too high or too low, dependent upon whether Mechling reduced or increased his inbound rate. There is, however, no rational basis for making reasonable compensation to the Pennsylvania for its independent outbound railroad service depend upon the measure of the rate charged by Mechling for an independent inbound barge service. It would be equally irrational to hold that reasonable compensation to the Pennsylvania for its services should be made dependent upon the measure of the inbound rate maintained by the Rock Island Railroad from some western origin to Chicago.

There may be cases in which the Commission apparently took action of the character just characterized as irrational. (*Southwestern Millers League* v. *A. T. & S. F. Ry. Co.*, 225 I. C. C. 195, 227 I. C. C. 795) A careful analysis of such cases will show, however, that the real issue before

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[20] Under the exemption contained in Section 303(b) of Part III of the Interstate Commerce Act, the transportation which Mechling conducts is not subject to regulation, nor is he required to file rates thereon, if the commodities contained in a tow consist of not more than three bulk commodities.

the Commission was as to the reasonableness of the aggregate charge, the proceedings involving, in the one case, the through rate as composed of the inbound charge and the outbound charge. In such cases there were through routes by common arrangement, and the action of the Commission simply amounted to the prescription and apportionment between carriers, who were all defendants in the case, of a reasonable through rate. Obviously, that is a different situation. Here, the issue as framed by the order of suspension and investigation was confined to separately established outbound rates from Chicago.

In *Atchison, T. & S. F. R. Co.* v. *United States* (1929), 279 U. S. 768, the appellant argued, as does the Commission in this case, that the total through charge should be considered, even if the issues as framed involved only a separately established proportional. This Court rejected the legal proposition just stated and held that the lawfulness of the proportional rate there in issue should be considered on its own merits as a separately established rate in the light of the service rendered thereunder and without being combined with a rate and service on the other side of the market. Mr. Justice Brandeis, speaking for the Court, observed that if a proportional, when applied on a transit shipment, is truly a part of a through rate, the fact would be without legal significance, and went on to say, at page 776:

> "The Commission's power to declare rates unreasonable applies alike to all rates, be they joint, local or proportional. The Commission may, and in controversies involving through rates often does, deal with one factor only of the combination of rates which make up the through rate. And that factor may be a proportional rate."

The statement just quoted is referenced to a footnote in which is cited *Cairo Board of Trade* v. *Cleveland, C. C.*

& St. L. Ry. Co., 46 I. C. C. 343, and other cases, where the Commission has announced a similar rule.[21]

At page 779, Mr. Justice Brandeis said (parenthetical matter added):

> "When the outbound shipment from Kansas City is made the grain goes forward on a new bill of lading at the balance of the through rate. Obviously, this practice cannot convert the independent shipment of grain from Kansas City (the reshipping point) to the gulf via the Southern into a through movement from Dodge City (the country origin) to the gulf."

In *Great Northern R. Co. v. Sullivan* (1935), 294 U. S. 458, 462, this Court, speaking through Mr. Justice Butler, took pains to note that the Commission "may determine whether a proportional, constituting a part of a combina-

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[21] In the *Cairo Board of Trade case*, the Commission employed reasoning which is equally applicable to the case at bar, saying (pp. 350-1):

> "• • • Reshipping rates are not merely divisions of through rates, but are separately established rates generally published by carriers other than those engaged in the inbound movement and without the concurrence of the latter; and the point of reshipment is a rate-breaking point. A change in the reshipping rates, even though it may affect the through charges, will have no effect upon the inbound rates. The inbound carriers have a right to secure reasonable compensation for their part of the haul by reasonable inbound rates. The reasonableness of such inbound rates is in no manner contingent upon reshipping rates. Furthermore, inbound rates used in connection with reshipping rates generally serve also as local rates. Hence they are subject to review independently of the outbound rates. An excessive reshipping rate might produce a reasonable through charge in connection with an unduly low inbound rate and vice versa. It can not properly be argued that a proposal to increase unremunerative reshipping rates could be denied upon the ground that the through charge composed of an excessive inbound rate and the unremunerative reshipping rate is just and reasonable. The converse must also be true, namely, that shippers may not upon like ground be denied relief from unreasonable or unduly prejudicial reshipping rates. This is also true as to proportional rates that are applicable to shipments going or from beyond and which are not limited as applying only on shipments from or to designated points or territory. Each of such rates must be judged upon its individual merits."

tion rate, violates Section 1 without passing upon the validity of the rate as a whole."[22]

III. The Commission exceeded its authority in passing upon the separately established proportional and reshipping rates in issue, in that it construed Section 2 of the Act as if the circumstances and conditions to be considered thereunder included the measure of the inbound rate, the length of the inbound haul, and the nature of the inbound service.

Section 2 of the Act prohibits unjust discrimination and, at the same time, defines with preciseness the facts which must be present in order to render the discrimination *unjust*. That section leaves to the determination of the Commission only the question of whether a particular situation is embraced as a fact within the prohibition. In this respect it is different from other sections of the Act which do not define what constitutes an unreasonable or a prejudicial rate. Unjust discrimination is defined as the charging of one person more than another person for a like and contemporaneous service in the transportation of a like kind of property under substantially similar circumstances and conditions.

By its terms, Section 2 operates within a very narrow field. The very narrowness of that field leaves little room for administrative discretion. In contrast therewith, Sec-

[22] In the *Great Northern Railroad case*, the suit was to enforce a reparation award based on a finding that a proportional rate assessed on past shipments damaged the shipper because in excess of a maximum reasonable rate. This Court held that the award could not be enforced because the award was not supported by a finding that the total charge, of which the proportional was only a part, was unjust and unreasonable. In so disposing of the case, this Court distinguished between the power of the Commission in awarding damages and the power of the Commission in finding a proportional rate to be unreasonable for the future. Consequently, appellants miscite that case, when they assert it is controlling upon the issues involved in this case, which issues relate only to the future and involve no question of damages in the past.

tion 3(1) is extremely broad and, while it prohibits undue preference and prejudice of any character whatsoever, Congress did not attempt to define in that section the facts to be considered in determining whether a particular rate relation is in violation thereof.

On the question of the similarity of services rendered on ex-barge, ex-lake and ex-rail grain, the Commission finds that "in each instance the physical carriage beyond the reshipping point is substantially the same." (R. 54)

The Commission avoids the conclusion that Section 2 is violated under such circumstances by saying (R. 54):

> "As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service."

It has been repeatedly held by the Courts, as well as by the Commission itself, that the only circumstances which may be considered in passing upon an alleged violation of Section 2 are those which directly relate to the service for which the charge is assessed, any difference in circumstances arising either before or after, or independently of, that particular transportation service being excluded from consideration.

The leading authority in the Commission's decisions, *Chattanooga Packet Co. v. I. C. R. R. Co.* (1915), 33 I. C. C. 384 (entire Commission), is squarely on all fours in its facts with the present case and also involved the identical question of statutory construction which the instant case involved. In that case the southern carriers had restricted their proportional rates against ex-water traffic and a formal complaint was brought. The Commission

found that the restrictions constituted unjust discrimination and said at page 392 (emphasis supplied):

> "The fact that the proportional rates to and from the Ohio River are compelled by competition can have no bearing upon our determination of the issue of unjust discrimination. The 'like circumstances and conditions' referred to in section 2 of the act are those which arise within the field of haulage, and do not include competition. *Wight* v. *U. S.*, 167 U. S. 512; *I. C. C.* v. *A. M. R. R. Co.*, 168 U. S. 144. The shippers who desire to avail themselves of the water-and-rail route must be given *equal treatment* with those who ship all-rail. Any discrimination which exists must not exceed that which is warranted by the *differences in the circumstances and conditions of the haul over defendants' lines.*"

And at page 393:

> "We are of the opinion and find that, by restricting their proportional rates to traffic routed over their southern rail connections, defendants are *unjustly discriminating* against complainant and against shippers who desire to route their goods over complainant's boat line."

A later case to the same effect is *Raw Sugar, New Orleans to Gramercy and Reserve, La.* (1935), 206 I. C. C. 231, in which the Louisiana & Arkansas Railway proposed a rate on raw sugars from New Orleans to Gramercy of one cent per hundred pounds when the sugar refined therefrom was reshipped via its line, the usual local of 3.5 cents to apply on the inbound movement if the refined sugar were reshipped via any other line, including the Federal Barge Lines. This was condemned by the Commission on the authority of the *Chattanooga Packet Co.* case.

Other cases in which the Commission has condemned a difference in separately established rates, because con-

ditioned on the traffic having had a prior or a subsequent haul via some particular type of carrier or route, include *Bascom Co.* v. *A. T. & S. F. Ry. Co.* (1909), 17 I. C. C. 354; *Rosenbaum Bros.* v. *L. & N. R. R. Co.* (1911), 22 I. C. C. 62; *Birkett Mills* v. *D. L. & W. R. R. Co.* (1927), 123 I. C. C. 63; *Ex-River Grain and Products to Mississippi Valley* (1931), 177 I. C. C. 206; and *Restriction of Proportional Rates* (1930), 161 I. C. C. 113.

The legal principle reflected by the finding of the Commission in this case is squarely in the face of the construction accorded Section 2 by this Court, except in one early case which must be considered to have been overruled by subsequent decisions.

The early case referred to is *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, in which the Interstate Commerce Commission sought to compel obedience to an order requiring the Texas & Pacific Railway to charge the same rate on import traffic received at New Orleans and reshipped to San Francisco as on domestic traffic shipped from and to the same points. The order entered was predicated on both Sections 2 and 3 of the Act. The carrier defended on the ground that competition with ocean steamers operating around Cape Horn, or by transshipment across the Isthmus of Panama, forced it to maintain an import rate below the normal local basis. This Court held that *such competition*, which arose outside of the field of haulage, made the circumstances dissimilar so as to take the case out of the purview of Section 2.

However, in *Interstate Commerce Commission* v. *Alabama M. R. Co.*, 168 U. S. 144, 166, this Court, speaking through Mr. Justice Shiras, who also wrote the opinion in *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, *supra*, took pains to announce a construction

of Section 2 at complete variance with that announced in the earlier case.

Texas & P. Ry. Co. v. *Interstate Commerce Commission, supra*, has never been cited by this Court in any subsequent case as authority for the construction there given Section 2.

All other cases in this Court, as well as in the lower Federal courts, have followed the construction of the Act for which we contend, and, in so doing, have given the Section 2 phrase "substantially similar circumstances and conditions," the same meaning as the English courts gave to a similar phrase in a comparable section, "the equality clause," [22a] in the English regulatory statute, prior to the enactment of the Interstate Commerce Act.

The earliest case in this Court under Section 2 is *Interstate Commerce Commission* v. *B. & O. R. Co.*, 145 U. S. 263. In that case this Court declined to enforce an order of the Commission entered under Section 2 which prohibited party rate tickets if sold on a basis which reflected lower fares than would be assessed in the case of an individual passenger. On the analogy of the retail versus wholesale transaction, this Court held that the services in the transportation of ten persons traveling together were not identical with the services rendered in the transportation of an individual passenger. It is to be emphasized that the distinguishing circumstances relied upon by this Court as a ground for invalidating that order related directly to the physical service for which were assessed the fares in issue.

In *Wight* v. *United States*, 167 U. S. 512, 518, a carrier made a cartage allowance to one shipper at Pittsburgh because that shipper was located on a competing line, and refused to make a similar allowance to another shipper not so located. The only section of the Act involved was Section 2. The carrier defended on the ground

[22a] Section 90 of the Railway Clauses Consolidation Act of 1845, 8 & 9, Vict., ch. 20, as reproduced on page 116 of Appendix "A" hereto.

that the difference in the competitive situation constituted a dissimilarity in circumstances and conditions. This Court rejected that defense, saying that the phrase "substantially similar circumstances and conditions" found in Section 2 refers "to the matter of carriage."

In *Interstate Commerce Commission* v. *Delaware, L. & W. R. Co.*, 220 U. S. 235, 253-4, this Court sustained an order of the Commission which forbade carriers from discriminating against forwarding companies by making the ownership of property a condition precedent to the application of the carload rate. There, as here, the physical carriage was identical. However, prior to the beginning of that carriage, the forwarding companies in competition with the railroad carriers gathered up small lots from individual shippers and brought them to a railroad station to be forwarded in a consolidated carload. Rail carriers endeavored by means of a rate penalty to discourage that competition. The order of the Commission condemned that penalty as unjustly discriminatory. That order was sustained by this Court on the ground (pp. 253-4) that Section 2 of the Act—

> "did not allow carriers by railroad to make a difference in rates because of differences in circumstances arising either before the service of the carrier began or after it was terminated."

Every matter relied upon by the Commission in the instant case as a differentiating circumstance occurs before the service of the eastern railroads begins.

The next case involving Section 2 is *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 326. In that case the order of the Commission required railroads to maintain the same rates on railroad fuel as on commercial coal consigned to a particular destination, regardless of the fact that the railroad fuel, after

reaching the destination, would move beyond as company freight to refueling stations located on the line of the carrier to whom the railroad fuel was consigned. The railroads urged that the added movement as "company freight" beyond the point at which delivered, such movement being required to get the coal to point of use, constituted a difference in circumstances. This Court, speaking through Mr. Justice McKenna, sustained the order of the Commission as a proper application of Section 2, holding that the differentiating circumstances on which the railroads relied were "extraneous to the transportation," and consequently not to be considered as constituting a dissimilarity of circumstances and conditions.

It was further said that (p. 343):

> "Such features do not affect the carriage, qualify or alter the essential service, which is to get an article from one place to another. The greater or less inducement to seek the service is not the service."

In the course of his opinion, Mr. Justice McKenna gave the following clear explanation of why conditions and circumstances other than those directly related to the carriage should not be considered (p. 342, emphasis supplied):

> "Once depart from the clear directness of what relates to the carriage only and we may let in considerations which may become a cover for preferences. May a carrier look beyond the service it is called upon to render to the attitude and interest of the shippers before, or their attitude and interest after, transportation? It must be kept in mind that it is not the relation of one railroad to another with which we have any concern, but the relation of a railroad to its patrons, *who are entitled to equality of charges.*"

In *Atchison, Topeka & S. F. Ry. Co.* v. *United States* (1929), 279 U. S. 768, this Court sustained an order of

the Interstate Commerce Commission entered in *Grain and Grain Products, I. & S. Docket 2813*, (1927), 129 I. C. C. 261, finding not justified a proposal of the Santa Fe Railroad to charge from Dodge City, Kansas, to Kansas City, Missouri, a higher rate on grain subsequently reshipped via some line other than the Santa Fe than on grain reshipped via the Santa Fe. In the course of its opinion this Court, speaking through Mr. Justice Brandeis, said (pp. 773-4):

> "* * * it is discriminatory to make that additional charge only if the outbound shipment is over one of several possible railroads."

In *Interstate Commerce Commission* v. *Delaware, L. & W. R. Co.*, 220 U. S. 235, 253-4, cited above this Court held that Congress must be presumed to have intended the same meaning for the phrases used in Section 2 as the English courts had accorded similar phrases in the "equality clause" of an earlier English statute, on which Section 2 was modeled.[23] One of those English cases, *Great*

[23] "It is not open to question that the provisions of Section 2 of the act to regulate commerce were substantially taken from Section 90 of the English railway clauses consolidation act of 1845, known as the 'equality clause.' *Texas & P. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 222, 40 L. ed. 940, 948, 16 Sup. Ct. Rep. 661, 5 Inters. Com. Rep. 405. Certain also is it that, at the time of the passage of the act to regulate commerce, that clause in the English act had been construed as only embracing circumstances concerning the carriage of the goods, and not the person of the sender; or, in other words, that the clause did not allow carriers by railroad to make a difference in rates because of differences in circumstances arising either before the service of the carrier began or after it was terminated. It was therefore settled in England that the clause forbade the charging of a higher rate for the carriage of goods for an intercepting or forwarding agent than for others. *Great Western R. Co.* v. *Sutton* (1869), L. R. 4 H. L. 226; *Evershed* v. *London & N. W. R. Co.* (1878) L. R. 3 App. Cas. 1029, 5 Eng. Rul. Cas. 351, and *Denaby Main Colliery Co.* v. *Manchester, S. & L. R. Co.* (1885), L. R. 11 App. Cas. 97. And it may not be doubted that the settled meaning which was affixed to the English equality clause at the time of the adoption of the act to regulate commerce applies in construing the second section of that act; certainly to the extent that its interpretation is involved in the matter before us. *Wight* v. *United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822; *Interstate Commerce Commission* v. *Alabama Midland R. Co.*, 168 U. S. 144, 166, 42 L. ed. 414, 423, 18 Sup. Ct. Rep. 45." (220 U. S. 235, 253-4)

Western R. Co. v. *Sutton* (1869), L. R. 4 H. L. 226, involved an effort on the part of a railroad to charge more on the traffic of an intercepting carrier than on other traffic transported from and to the same points. In the course of his opinion, Mr. Justice Blackburn said (p. 245):

> "* * * the fact that the Plaintiff was a rival carrier does not, in itself, make a difference in the circumstances such as to justify a difference in the charge under the statute; it rather makes against the Defendants as supplying a motive for an attempt to evade the statutable provision."

An English case, which touches closely the issue in the present case, is *Denaby Main Colliery Company* v. *Manchester, S. & L. R. Co.* (1885) L. J. 55 Q. B. 181, 187, 189, L. R. 11 App. Cas. 97, 116, 120, 6 Eng. Ry. & C. Traf. Cas. 133, 138, 141, affirming L. R. 14 Q. B. 209, 224, 4 Ry. & Car. Traf. Cas. 437, 452. A number of separate rate situations were involved in that case. The one of chief interest to us involved the granting of a greater allowance on coal from a given origin to Grimsby if the coal went beyond by the Hamburg-American Line than on coal from and to the same points going beyond Grimsby by other steamer lines. The question for determination was as to whether this difference in lines used beyond the port made the circumstances unlike so as to make the equality clause inapplicable. That question was answered in the negative by the Queens Bench Division, by the Court of Appeals, and finally by the House of Lords. When the case was before the Court of Appeal (L. R. 14 Q. B. 209, 224), LINDLEY, L. J., at page 452, said:

> "* * * the expression 'under the like circumstances' has been the subject of decision, and must now be taken to mean under like circumstances as regards the services performed by the railway company in receiving, carrying, and delivering the goods."

This construction was approved in the House of Lords, Lord Blackburn stating (L. R. 11 App. Case 97, 120) (emphasis supplied):

> "* * * the obligation to charge, in respect of goods of the same description, equally, is imposed if they are 'under the same circumstances,' and that the circumstances are those *relating to the carriage of the goods*, * * *."

In the same forum the Earl of Selborne said (p. 116):

> "The motives and reasons for making these allowances are plainly not material, as against the appellants' claim to have their coals carried on the same terms."

We respectfully submit that the phrase "under substantially similar circumstances and conditions" must be construed, *as a matter of law*, as relating only to the route, expense, and physical conditions surrounding the carriage between the points where the rate in question applies.[24] If we are correct in this, the Commission proceeded upon an erroneous principle of law and its order is void and must be set aside.

None of the appellants seeks to distinguish or to explain the authorities above cited. The argument by which appellants seek to avoid the force of these authorities may be summarized in three steps as follows:

(1) That proportional rates have been long known to the law, and their validity is predicated on the proposition that the services under a proportional rate are unlike the

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[24] The editors of the United States Supreme Court Reports Law Edition, in reporting *Interstate Commerce Commission* v. *D. L. & W. R. Co.*, 220 U. S. 235, 55 L. ed., 448, 450, report counsel for the Government and for the Commission as expressing the legal principle for which we contend in the following language:

> "As used in the English acts, the words 'same description' and 'like description' exhaust themselves upon the traffic and the words 'like circumstances' exhaust themselves upon the route, expense, and risk of carriage; and none of those phrases can be extended to the personal qualities of the party who makes the shipment."

services under a local rate between the same points, since the former is only a part of a through service, while the latter is a complete service in and of itself.

(2) That the Commission has often approved proportional rates from a given reshipping point to a common destination which vary dependent upon the origin or the origin territory of the inbound traffic. *Central Pennsylvania Coal Producers Association* v. *B. & O. R. Co.*, 196 I. C. C. 203, 235, is cited, in which the Commission held:

> "Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed."

It is said that when the origins are different, the services rendered from a common reshipping point to a common destination are different on the traffic from one origin than on the traffic from the other because different parts of different aggregate services are involved.

(3) As a final step in the argument, appellants contend that a difference in the *methods* of carriage from a common origin to the reshipping point as well as a difference in the *charges* assessed for such inbound hauls are analogous to a difference in origins so as to provide a lawful predicate for a difference in outbound reshipping rates.

The mere statement of the third step in the reasoning of the appellants discloses a complete lack of the very analogy relied upon.

For the purposes of this case, it is unnecessary to pass upon the propositions stated in either (1) or (2) above since the violation of Section 2 of which appellees complain does not involve a difference in proportional or reshipping rates made dependent on a difference in the origins from whence the inbound traffic moves. The rates

proposed, which the Commission approved as just, reasonable, and not otherwise unlawful, do not condition the restriction against ex-barge traffic on the origins of the barge movement; rather such restrictions are conditioned only on the fact that the inbound move is via the Illinois waterways.[25] Consequently, the real issue is whether the difference between an inbound move by barge over the Illinois waterways on the one hand and an inbound move via rail from a common origin on the other hand constitutes a dissimilarity of circumstances and conditions within the meaning of Section 2.

The reasoning, on which the Commission has approved proportionals which vary according to origins, affords no support for the construction of the Act advocated by the appellants. This is because the service rendered by the Pennsylvania Railroad in the reshipment of grain from Chicago to New York constitutes the *same* portion of a through service from Kansas City, Mo., regardless of whether the traffic is brought to Chicago via the Rock Island Railroad, or via the Santa Fe Railroad, or via the Inland Waterways Corporation.

Furthermore, the difference between the inbound rate of the Inland Waterways Corporation, on the one hand, and of the Rock Island, on the other, cannot possibly bear upon the level of the reshipping rate which the Pennsylvania Railroad is entitled to collect from the outbound shipper of ex-barge grain. That difference in inbound charges is so wholly extraneous to the services of the Pennsylvania Railroad that neither in logic nor in law can a difference in the outbound shipping rates be predi-

[25] Inland Waterways Corporation uses the Illinois waterways to reach Chicago regardless of the origin of the grain. Exhibit 63 shows that such grain has in fact originated at river ports in the States of Missouri, Iowa, and Illinois. (R. (ex. vol. p. 101) The affidavit of the general traffic manager of this appellee shows that in 1939, 1940, and 1941, the grain transported to Chicago originated at river points in the States of Illinois, Missouri, Kansas, and Tennessee. (R. 1707-8)

cated thereon. In further development of this point, we respectfully refer the Court to the comments found in the dissenting opinion of Chairman Eastman (R. 55-76), and particularly to his discussion of proportionals which vary depending on origins of the inbound traffic. (R. 65-8)

Insofar as ex-barge versus ex-lake grain is concerned, there is a difference in the matter of origins. If the tariffs predicated the difference in the outbound rates on that difference in origins, it would then be necessary for this Court to say whether Section 2 permits such an adjustment. However, since the tariffs are predicated only on a difference in the waterways used, that is, whether via the Illinois waterways or whether via the lake, regardless of origins, it is not necessary, even as to ex-barge versus ex-lake grain, to enter upon a discussion of the legality of proportionals which are made to vary according to the the origin of the inbound traffic. Parenthetically, in *Atchison T. & S. F. R. Co.* v. *United States*, 279 U. S. 768, 781, the appellant urged that if the proportional proposed by it, conditioned on the traffic going out over other railroads, was to be condemned, then the Commission should have suspended and ordered cancelled the proportionals of other lines which were made to vary according to the origins of the inbound traffic. However, this Court held that that question was not subject to review in that case. That is as close as this Court has come to considering the legality of varying proportionals under Section 2.

There is a case antedating the Interstate Commerce Act, *Union Pacific Ry. Co.* v. *United States*, 117 U. S. 355, 363, in which this Court was called upon to say, when construing the charter of the appellant, that the service rendered in transporting local passengers between two points is not "identical" to the service rendered in transporting through passengers between the same point who

began or terminated their journey beyond. In that case, however, this Court was dealing with a claim of the appellant against the United States and was not construing a statute, such as Section 2, which has been repeatedly judicially construed so that the phrases contained therein have an accepted legal meaning no longer open to dispute. Furthermore, there was no claim in that case that the service of transporting one through passenger between given points was different from the service of transporting another through passenger between the same points because of a difference in the carriers on which the passengers travelled to the point of connection with the Union Pacific.

Finally, it should be emphasized that we do not here ask the Court to substitute its judgment for that of the Commission. Rather, we urge that there is no room for the exercise of judgment on this fundamental charge of discrimination. In this respect, the case is similar to the case of *Mitchell* v. *United States*, 313 U. S. 80, wherein the Court set aside an order of the Commission dismissing a complaint against discrimination in the matter of passenger accommodations provided for a colored passenger. In that case this Court said, p. 98:

> "On the facts here presented, there is no room, as the Government properly says, for administrative or expert judgment with respect to practical difficulties. It is enough that the discrimination shown was palpably unjust and forbidden by the Act."

IV. The Commission did not correctly apply the statute in that it held that a difference in the outbound rates on ex-barge traffic, on the one hand, and ex-rail and ex-lake, on the other, was not discriminatory as between connecting carriers in violation of Section 3(4); differences in the measure of inbound rates, in the lengths of the inbound hauls, and in the nature of inbound services do not justify difference in the outbound rates.

A. THE COMMISSION FAILED TO APPLY SECTION 3(4) ACCORDING TO ITS TERMS AS AMENDED BY THE TRANSPORTATION ACT OF 1940.

At the time this case was heard by the Commission, the port-to-port service of the appellee, Inland Waterways Corporation, in the transportation of bulk grain was not subject to the Interstate Commerce Act because it was not conducted under a common arrangement for continuous carriage with rail lines beyond.[26] At that time, the Commission construed Section 3(3) (now 3(4)) of the Act, which forbade one carrier from discriminating in its rates as between connecting lines, as providing protection only for connecting lines subject to regulation as to the particular traffic involved. This was on the premise that the phrase "such connecting lines" referred back to the phrase "carriers subject to the provisions of this Act." *American Hawaiian S. S. Co.* v. *Erie R. Co.* (1929), 152 I. C. C. 703, 708.[27] In a prior case involving issues

[26] Prior to the passage of the Transportation Act of 1940, Section 1(1)(a) of the Act provided that common carriers by water were subject to regulation by the Commission only when they were common carriers engaged in the transportation of property partly by railroad and partly by water when both are used under a common arrangement for continuous carriage or shipment. Compare *United States* v. *Munson Steamship Line*, 283 U. S. 43.

[27] In the case cited, the Commission observed that the construction accorded the statute was consistent with *Capehart & Smith* v. *L. & M. R. Co.* (1890), 4 I. C. C. 256, which the Commission said had been adhered to continuously since that date. That statement in the case cited is erroneous since, in a number of cases decided between 1890 and 1929, the Commission had treated Section 3(3) as prohibiting discrimination against a connecting water carrier, even in the absence of a common arrangement for continuous transportation. See *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I. C. C. 384, 391, and cases

similar to those involved in the instant case, relief as to this appellee under Section 3(3) (now Section 3(4)) was withheld upon the construction of the statute just stated. *Ex-River Grain from St. Louis to the South* (1934), 203 I. C. C. 385, 391. While the report of Division 2 in this case did not deal with the merits of the case, it took occasion to mention that construction of the statute (R. 18, p. 363) but for some unexplained reason did not note that the statute had been amended in the meantime so as to make inapplicable the cases cited by it when commenting on the contentions of this appellee. That amendment to the statute, which occurred prior to the report of Division 2,[27a] was accomplished by the Transportation Act of 1940. (54 Stat. L. 949) By that Act, Congress renumbered Section 3(3) as Section 3(4), and in addition, added a sentence thereto reading as follows:

> "As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III."

By this amendment the Congress intended to provide for common carriers by water subject to Part III the same protection against discrimination by connecting rail carriers as has always been provided in paragraph (3) of Section 3 for the benefit of all carriers subject to Part I. Having ordained a new order by bringing common carriers by water within the regulatory powers of the Commission, the Congress thus imposed upon the rail carriers a new duty to refrain from discriminating in their rates between connecting water lines, or between connecting rail and water lines, as well as between connecting rail lines.

To complete the picture, Section 305(d) of the Interstate Commerce Act, as amended, was enacted to impose upon common carriers by water the same duty with respect to

[27a] On page 54 of brief counsel for the Commission state that the Transportation Act of 1940 became effective *after* the report of Division 2. That is not true.

discrimination between connecting common carriers by railroad, as is imposed on the rail carriers in Section 3(4). This section is in exactly the same terms as is Section 3(4), and the result is to require both common carriers by water and common carriers by railroad for the future to accord equal treatment to all their connecting lines, of whatever character. Historical differences are to be forgotten, and it matters not under the terms of the statute whether in the past discriminations between connecting lines have been one sided or which type of transportation has, in this respect, held the upper hand; for the future, each mode of transportation named in these sections must treat connecting lines via the other mode of transportation exactly as it treats its kindred connecting lines.

The substantive provisions of the present Section 3(4) have been a part of the statute continuously since the enactment of the original Act to Regulate Commerce (24 Stat. L. 380). In the original Act, these provisions were contained in paragraph (2) of Section 3, which became paragraph (3) of Section 3, as amended by the Transportation Act, 1920 (41 Stat. L. 479). The many decisions under these early provisions of the law are uniformly harmonious with and support the contention of appellee herein.

The earliest application of this provision in a judicial proceeding is found in *Cutting* v. *Florida Ry. & Nav. Co.*, 30 Fed. 663, 665, which involved a petition by a steamship line filed in a railroad receivership case. The petitioner sought an order directing the receiver to cease discrimination between petitioner and a competing steamship line by giving a lower rate on traffic brought to the port by the one than by the other. The petition was filed before but decided after enactment of Section 3; the receiver immediately reformed his tariffs so as to make no discrimination

between the competing steamship lines. In this situation, the Court only gave general instructions to the receiver, including the instruction that "He will not discriminate, in his rates, charges, and facilities, for or against the Clyde line or the Mallory line, but will give to both equal rates and facilities for trade and travel, for equal service, from all points."

In *The N. Y. & N. Ry. Co.* v. *The N. Y. & N. E. R. R. Co.*, 4 I. C. C. 702, The New York & Northern Railway complained, *inter alia*, that the defendant maintained discriminatory rates in favor of traffic handled by the Housatonic Railroad. In discussing the language of Section 3(2), now Section 3(4), the Commission stated at page 720 of its report:

> "When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment."

This interpretation of the law was judicially affirmed by the Court in *The New York & N. Ry. Co.* v. *New York & N. E. R. Co.*, 50 Fed. 867, which was a successful proceeding to enforce the order entered by the Commission in the above case.

In *Augusta S. R. Co.* v. *Wrightsville & T. R. Co.*, 74 Fed. 522, the Court was confronted with a situation similar in every essential respect to that here presented. The plaintiff in that case, Augusta Southern Railroad, complained that the defendant, Wrightsville & Tennille Rail-

road, demanded a charge of $2.76 per ton to render precisely the same transportation service on freight which had received a previous transportation by plaintiff as freight which had received a prior transportation by plaintiff's competitor, The Central of Georgia Railway, on whose freight defendant charged only $2.40 per ton. The defendant in that case interposed the defense that it did not connect with the plaintiff, which defense is echoed in the argument of the defendants herein. As to this, the Court noted that the defendant had no more connection with the Central of Georgia than it did with plaintiff's railroad, which observation is equally applicable to the situation herein, where the connection between the appellant railroads and the lake carriers is precisely the same as that maintained with this appellee.

In granting the relief sought, the Court held that it had the power to prevent the defendant from "charging for such service rates so unreasonable as to prohibit the shipments of interstate freights by the complainant's road; thus compelling all such freights to be shipped over the road in whose favor the discrimination is made."

Chattanooga Packet Co. v. *I. C. R. R. Co.*, 33 I. C. C. 384, involved a complaint by a common carrier on the Tennessee and Ohio rivers against the railroads operating north of the Ohio River, based upon precisely the same discriminatory measures as have been taken by the eastern railroads herein against this appellee. At page 384 of the Commission's report in that case, the essential facts are stated thus:

> "On traffic routed via the rail carriers connecting Chattanooga with the Ohio River defendants apply proportional class and commodity rates to and from Ohio River crossings, but on that routed via complainant's boat line they apply the local rates to and from the river points at which the interchange is made,

which are upon a higher basis than the proportional rates."

While the complaint in that case raised issues under Sections 1 and 2 of the Act, which were also decided in complainant's favor, we here emphasize only the interpretation of the then provisions of Section 3(2), which were in substance the same as the present provisions of Section 3(4) except for the sentence added in 1940. At page 391 of its report, the Commission there observed:

> "By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in the one case than in the other."

In granting the relief sought, the Commission further observed at page 392:

> "If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic via their all-rail connections, they will be in a position to destroy all water competition and to deprive shippers of the advantage of their location upon navigable waters."

While the amendment of Section 3(4) was called to the attention of Division 2 prior to its report, it made no application thereof. In fact, Section 3(4) is not even mentioned in the report of Division 2. Consequently, this appellee filed its petition for reconsideration and rehearing which is reproduced in the record at pages 38-45, inclusive, to call the attention of the Commission to the change in the law and to the right of this appellee to receive the protection contemplated by the statute as amended after the hearings were concluded. The report of the Commission on reconsideration took no notice of

that petition or of the change in the law other than by the following statement (R. 49):

> "The only protestant seeking a further hearing is the Federal Barge Lines, which points out that since the hearing it and certain other barge lines have filed their port-to-port grain rates with us, but this is a fact of which we can take official notice. Certain of the parties ask for reargument. Under the circumstances, we think that no useful purpose would be served by further hearing or reargument and that the matter can properly be disposed of in this report with a view to determining what, if any, modification or clarification of the division's findings should be made on reconsideration of the record in the light of the petitions and replies and our prior decisions."

We emphasize that the Commission made no mention of the Transportation Act of 1940 and that there is no indication in its report that it disposed of the case in the light of the amendments to the Interstate Commerce Act accomplished thereby. This disregard of the change in the substantive law is sufficient to condemn the assailed order.

There is no reasonable theory upon which an eastern line, such as the Pennsylvania Railroad, can dictate to this appellee what it should charge for the transportation of grain via barge from Kansas City to Chicago. Nor is there any reasonable theory upon which the Pennsylvania Railroad can insist on a higher reshipping rate on the traffic of a connecting carrier which happens to be a water line than it charges on traffic from a connecting carrier which belongs to the railroad family. Yet the construction of Section 3(4) adopted by the Commission in this case confers those powers upon the eastern railroads. That is to say, the Commission holds that it is lawful for an eastern railroad to make its proportional or reshipping rates differ as between connecting carriers from a common origin by reason of a difference in the inbound rates to the re-

shipping point and by reason of a difference in the nature of the inbound services. That holding is based on a misconstruction of the governing statute so that the District Court was right in enjoining the order.

The 1940 amendment of Section 3(4), when coupled with the reference by the Commission to inbound traffic received from motor carriers, affords another indication of a definite failure on the part of the Commission to apply the statute as Congress intended. In its report on reconsideration, the Commission found (R. 55) that the respondents were justified under Section 1 in treating ex-barge the same as ex-truck traffic, and that the proposed schedules could not be condemned as unlawful under Sections 2 and 3 of the Act, no paragraphs of the latter section being specified. Motor carriers are also subject to the Interstate Commerce Act by virtue of Part II thereof, but Congress significantly omitted to include common carriers by motor vehicle from the connecting lines protected by Section 3(4). When the Commission on its part considers ex-barge traffic to be in the same category as ex-truck traffic it fails to give the statute the application intended by Congress.

B. A CARRIER COMPLAINING OF DISCRIMINATION AGAINST IT NEED NOT HAVE A COMMON ARRANGEMENT FOR THROUGH CARRIAGE WITH THE CONNECTING LINE WHICH IS RESPONSIBLE FOR THE DISCRIMINATION IN ORDER TO BE IN A POSITION TO COMPLAIN OF THAT DISCRIMINATION.

Appellants argue that there must be a through route, by which they apparently mean a common arrangement for through carriage, before we have a connecting line under Section 3(4), *Investigation of Seatrain Lines, Inc.* (1935), 206 I. C. C. 328, 343, being cited. That case is without significance. In the first place it involved the physical interchange of cars between rail lines, on the one hand, and a water carrier equipped to receive railroad cars on its boats.

on the other hand. Such a case has no similarity to one involving discrimination in the matter of reshipping rates. In the second place, that case was decided under Section 3(3) as it read prior to the Transportation Act of 1940. As stated, the section was then construed as not embracing a water line unless that water line was subject to Part I by virtue of having established a common arrangement for continuous carriage with connecting rail lines. These differences also serve to distinguish *Hoboken Mfrs. R. Co. v. Abilene & S. Ry. Co.* (Jan. 8, 1940), 237 I. C. C. 97, 101.

The Commission did not find that Section 3(4) was inapplicable due to the lack of a through route; rather, as noted above, the Commission completely ignored the section. The references in the report of Division 2 to the lack of through routes established by common arrangement between water lines not subject to the Act, on the one hand, and eastern railroads, on the other, constituted nothing more than a step in the erroneous reasoning by which Division 2 concluded that the existing proportional and reshipping rates had never been applicable to ex-barge grain. Consequently, the position which the eastern railroads appellants (but not the Commission) take to the construction of Section 3(4), as amended, may or may not reflect the views of the administrative body. The views of the Commission on the point under discussion are not disclosed by its reports.

A discrimination resulting from the maintenance of varying proportionals and reshipping rates dependent upon the particular inbound carrier from which traffic is received constitutes discrimination of an entirely different kind from that which flows from a refusal to establish through routes. An outbound carrier can establish a proportional and reshipping rate without the concurrence of the inbound carrier. Furthermore, in case of traffic temporarily stored

at point of reshipment, there is no need for a common arrangement for through handling. In fact, such an arrangement would be novel since the inbound carrier parts with all control of the traffic when delivered into the elevator. The further movement of the traffic and the rates paid thereon is solely a matter for the outbound carrier. Yet, discrimination between connecting carriers in the application of proportional or reshipping rates is just as offensive as discriminations between connecting carriers in the case of traffic transported over through routes established by a common arrangement.

This appellee is in precisely the same situation as a lake line or as a western railroad insofar as the establishment of a through route for the grain traffic here involved is concerned. In any one of these cases there is no continuous transportation since the inbound carrier delivers the goods into an elevator and completely parts with all control over the goods. There is no rational theory to support the view that Congress intended the prohibition of Section 3(4) as to discrimination in rates between connecting lines to be inapplicable in such a case.

Furthermore, the term "connecting line" has always been applied to these western railroad, lake, and barge lines despite the interruption in the through traffic. Exhibit 1, page 10, shows that the phrase "connecting rail or lake lines" was used in the tariffs as early as August 15, 1912. (R. (ex. vol.) p. 10).

In *Chicago, I. & L. R. Co.* v. *United States*, 270 U. S. 287, 293, this Court refused to set aside an order of the Commission entered under Section 3(4) (then Section 3(3)), although the principal contention of the appellant was that there was no physical connection between it and the line discriminated against.

It was unnecessary to add "common carriers by water subject to Part III" to Section 3(4) if Congress had intended that section to apply only when there was a common arrangement for through carriage. That is because a water line which has entered into such a common arrangement for through carriage would be within the purview of the statute as it read before the 1940 amendment. If the contentions of appellants on this point are valid, the amendment was mere surplusage. The amendment cannot be so treated under accepted canons of statutory construction; it must be given some meaning and application.

C. DISCRIMINATION IN RATES AGAINST A CONNECTING WATER LINE, AND IN FAVOR OF A CONNECTING RAIL LINE, IS NOT AUTHORIZED BY OTHER SECTIONS OF THE ACT.

Some of the appellants present rather involved and not wholly understood arguments based on statutory provisions relating to the establishment of through routes between rail and water carriers and based on Section 305(c) of Part III of the Act.

Apparently one contention is that discrimination between a connecting water line, on the one hand, and a connecting rail line, on the other, is forbidden only if such discrimination constitutes the equivalent of a refusal to establish through routes and joint rates which meet the test of being necessary in the public interest. If so, a complete answer is found in *Chicago, I. & L. R. Co.* v. *United States*, 270 U. S. 287, in which this Court sustained an order of the Commission requiring the removal of discrimination as between connecting carriers found to be in violation of Section 3(3) (now Section 3(4)) of the Act, and in *Virginia R. Co.* v. *United States*, 272 U. S. 658, 666-7, in which this Court sustained an order of the Commission, which found unreasonable an existing through rate main-

tained on a combination basis, but without prescribing through routes and joint rates. In the cases cited, this Court held that the orders assailed should be tested by the authority conferred by the sections of the Act which were being enforced and that other provisions in the Act relating to through routes and joint rates were wholly irrelevant.

Another contention rests on that portion of Section 305(c) of Part III, which provides that differences in the rates of a water carrier in respect of water transportation from those in effect by rail carrier in respect to rail transportation shall not be deemed to constitute unjust discrimination within the meaning of any provision of either Parts I or III of the Act. It is apparently argued that this evidences an intent by Congress to authorize a different treatment for a connecting water line than for a connecting rail line. It should be obvious that such is not the intent of the statute. Congress was fearful that the Commission might force an increase in the rates of water carriers on some theory of unjust discrimination in order to improve the competitive lot of a higher rated rail line with which such water carriers competed in the handling of traffic. This section prevents western lines from complaining that the barge lines cause unjust discrimination against them by virtue of the lower rates maintained by such barge lines. That forces the railroads collectively to adopt the boycott method illustrated by this case in order to handicap the water service.

Congress did not intend to say, however, that the rates charged *for rail service* might lawfully be different as between the traffic received from a connecting rail carrier, on the one hand, and the traffic received from a connecting water carrier, on the other hand, solely because of a difference in the character and nature of the service up to the

reshipping point. If it had intended to so provide, it would have used language different from that found in Section 305(c) of Part III.

D. THE PROVISO IN SECTION 3(1) HAS NO APPLICATION TO THE CASE OF THE INLAND WATERWAYS CORPORATION.

Section 3(1) prohibits undue preference and prejudice of any description as between particular persons, companies, firms, corporations, associations, localities, ports, port districts, gateways, transit points, regions, districts, territories, and particular descriptions of traffic. Section 3(1) concludes with the following proviso:

> "PROVIDED, however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Appellees urge that this proviso should be read into paragraph 4 of Section 3 so as to cancel the prohibition there contained against a discrimination in rates against a connecting barge line. The answer to this contention is obvious from the words of the proviso, which refers only to "this paragraph," meaning paragraph 1, and not paragraph 4, of Section 3.

The purpose of the proviso in paragraph 1 is to make it plain that one carrier cannot complain that a competing carrier, which ordinarily would be a paralleling carrier, maintains rates on such a basis as to prejudice the traffic of the complaining carrier. As applied to this case, this appellee would have no right to complain under Paragraph 1 of Section 3 of prejudice to its traffic because of the subnormal railroad adjustment maintained by western lines from Illinois River origins to Chicago. Compare *Mississippi Valley Barge Line Company* v. *United States*, 292 U. S. 282. However, appellee may still complain as a

connecting line under Section 3(4) of the discrimination in rates practiced against it by the railroads east of Chicago.

V. Reasonableness of rates is no defense to a charge of discrimination.

The briefs of the appellants are permeated throughout with the thought that the proposed change in rates is reasonably required so that the Commission properly overlooked the discriminatory character thereof. This Court has repeatedly held that rates which are not properly related are in contravention of the sections of the Act which prohibit discrimination, even though just and reasonable in all other respects.

The Commission, as plaintiff-appellant, so contended in *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 145 U. S. 263, and at page 277, this Court said:

> "* * * We agree, however, with the plaintiff in its contention that a charge may be perfectly reasonable under section 1, and yet may create an unjust discrimination or an unreasonable preference under sections 2 and 3. As was said by *Mr. Justice* Blackburn in *Great Western R. Co.* v. *Sutton*, L. R. 4 H. L. 226, 239: 'When it is sought to show that the charge is extortionate as being contrary to the statutable obligation to charge equally, it is immaterial whether the charge is reasonable or not; it is enough to show that the company carried for some other person or class of persons at a lower charge during the period throughout which the party complaining was charged more under the like circumstances.'"

See also *American Exp. Co.* v. *South Dakota ex rel. Caldwell*, 244 U. S. 617, 624, and *United States* v. *Illinois C. R. Co.*, 263 U. S. 515, 524.

In *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, relied upon by appellants, there was no issue

as to discrimination in rates as between connecting carriers. In *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, also relied upon by appellants, this Court sustained an order fixing minimum reasonable rates on ex-water coal. That case, however, involved no issue under Section 2 as to unjust discrimination between shippers, nor did it involve any issue under Section 3(4) as to discrimination in rates between connecting carriers.

VI. The Commission committed an error of law in failing to dispose of the case under Section 6 (11) (b) of the Act and in failing to hold the eastern railroad appellants to the burden of proof imposed on them by Section 15(7) of the Act.

Under Section 6(11)(b) of the Act, the Commission is given power to establish proportional rates via railroad to and from ports to which traffic is brought or from which it is taken by a common carrier by water. That is the only section of the Act which uses the words "proportional rates," which are defined as "those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."[28]

This power is in addition to power conferred elsewhere by the Act to require railroads and water carriers to join in through routes and joint rates, and was placed in the Act as a part of the Panama Canal Act (49 Stat. 543) at a time when port-to-port water service was not subject to any regulation by the Commission. It was continued in the Act, although renumbered, by the Transportation

[28] This section constitutes legislative approval for such discrimination as may result from the fact that ex-water traffic is transported from a given railroad origin to a given railroad destination at less than local rates.

Act of 1940. In view of the fact that the latter statute amended the Interstate Commerce Act so as to provide complete regulation of water transportation and so as to deal comprehensively in other sections with the whole subject of through routes and joint rates between rail and water carriers, Section 6(11)(b) is especially significant in this proceeding which involves proportional rates only. It evidences the intent of Congress to authorize proportional rates on ex-water traffic wholly apart from any through route and joint rate structure. It also evidences the intent of Congress to authorize such proportional rates on ex-water traffic transported inbound by a common carrier by water in cases where the transportation conducted by the water carrier is subject to Part III of the Act,[29] as well as in cases where it is not so subject. Parenthetically, this renders meaningless much of the rather involved argument presented by counsel for appellants regarding the relation of the statutory provisions governing through routes and joint rates between rail and water carriers to the issues in this proceeding.

The 26-cent proportional or reshipping rate on ex-barge and ex-lake grain from Chicago to New York as presently in effect is a proportional of the character defined in the section above mentioned. The proposal of the carriers ap-

[29] Part III of the Interstate Commerce Act subjects to regulation port-to-port transportation by water on inland streams generally. However, Section 303(b) thereof exempts from such regulation "the transportation by a water carrier of commodities involved when the cargo space of the vessel in which section commodities are transported is being used for the carrying of not more than three such commodities," it being further provided, for the purpose of that subsection, that "two or more vessels while navigating as a unit shall be considered to be a single vessel." Since the Inland Waterways Corporation transports bulk grain in tows with general commodities, transportation by it never comes within this exemption. The A. E. Mechling Barge Line, operating on the Illinois waterway and on the Mississippi River between Burlington, Iowa, and New Madrid, Mo., inclusive (R. 1722), conducts transportation within the exemption if not more than three species of grain are contained in a single tow, although the transportation is not exempt when Mechling transports more than three species of grain in the same tow.

proved by the Commission is to eliminate that rate as applied to ex-barge traffic and to continue it as applied to ex-lake traffic.

The carrier respondents before the Commission made no effort to justify 34.5 cents as a reasonable proportional of the character contemplated by Section 6(11)(b). Rather, they rested their entire case on the proposition that there should be no proportional of any character for ex-barge grain. Protestants, who are the appellees here, contended that this was not sufficient and that Section 15(7) of the Act imposed upon the respondents the burden of proof to show that the increased rate is just and reasonable as an ex-water proportional. That is to say, it was incumbent on the carrier respondents before the Commission to show a difference in the outbound transportation conditions encountered in handling the ex-water traffic which arrives via barge and the ex-water traffic which arrives via lake so as to justify a difference in the proportional rates thereon of the character defined in Section 6(11)(b) of the Act. No evidence of the character suggested is in the record.

The Commission ignores Section 6(11)(b) in its report and makes no mention of the burden of proof imposed on the carriers under Section 15(7). The most that the report does is to slant at the possibility of the ex-barge traffic being entitled to a reasonable proportional rate under Section 6(11)(b). That is to say, the report refers to the collective contentions of all protestants regarding the unreasonable, unjustly discriminatory, and unduly prejudicial character of the proposed rates and says (R. 54-55):

> "* * * the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge

traffic lower than local rates or joint barge-and-rail rates lower than the combinations.[30]

"The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act."

By the remark in the first paragraph above quoted, the Commission improperly postponed to undefined and uninitiated future proceedings all exercise of its power and duty under Section 6 (11) (b) of the Act to prescribe just and reasonable proportional rates for application to ex-barge grain. In so doing, the Commission arbitrarily approved schedules which had been shown to it to be unlawful, and postponed indefinitely the restoration of the existing rates to take their place. In so doing, it convicted itself of a dereliction of duty of the nature condemned in *United States et al. v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499, wherein this Court said, at page 510 (emphasis supplied):

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[30] A somewhat corresponding finding is found in the report of Division 2 at pages 358 and 359 reading:

"On exceptions, the Chicago protestants request that we find the Mechling Line to be a common carrier by water and that the grain transported by it to Chicago is within the traffic described in section 6(11)(b) of the act. On argument counsel for this line stated that he has been instructed to file its rates here as a common carrier of grain by February 1, 1941, but that the line takes the position it is not a common carrier 'of everything.' The evidence presented with respect to this line's common-carrier status is not supported by testimony other than the self-serving statements made by its witness. The Mechling Line filed no appearance in this proceeding, and its evidence must, therefore, be construed as gratuitous in character. On the present record the evidence for this line is conflicting and is insufficient to warrant a determination of its carrier status." (R. 18, p. 358)

* * * * *

"Under section 6(13)(c) (now section 6(11)(b)) of the act, we have jurisdiction to prescribe proportional rail rates on traffic which has been hauled to a port or is carried from a port by a common carrier by water. This record is replete with complexities and technicalities, and does not contain sufficient information to warrant prescribing proportional rates on traffic arriving at the rate-break points in common-carrier boats." (R. 18, p. 359)

"The reproach of piecemeal action is incurred by the Commission, which has not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates, which has not questioned its own capacity to prevent unjust reprisals, which has put off to an indefinite future the remodeling of the rate structure for all the carriers affected, and which has left this particular carrier helpless in the interval. In brief a schedule of lower tariffs has been canceled though the facts that control the validity of the reduction have yet to be determined. *This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come.*"

Plainly, the Commission ignored the fact that the investigation and suspension proceeding before it involved an issue as to whether the railroad respondents had justified an increase in the proportional rates maintained by them of the character ~~authorized~~ in Section 6(11)(b). This is emphasized by two matters in the report; first, the suggestion that the record is insufficient on which to predicate a finding as to what would be such a reasonable proportional rate. If the record were in fact insufficient, then the respondents did not bear the burden of proof imposed on them by the statute, and the Commission was required to find that the increase had not been justified.[31] We have heretofore shown when a change is proposed, suspended, and hearing had, Section 15(7) is mandatory in requiring the Commission to "make such order with ref-

[31] Prior to the Transportation Act of 1940, the concluding sentence in Section 15(7) of the Act which was in effect at the time of the hearing herein read: "At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this part, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, * * *." The Transportation Act of 1940 amended this provision so as to impose the burden of proof upon the carrier, whether the change in rate be up or down, as to any hearing involving a change in rates after the amendatory provision took effect.

erence thereto as would be proper in a proceeding initiated after it had become effective."[31a]

However we do not contend that the Commission is thereby required to fix a specific rate in lieu of the one proposed. But, if the record is insufficient to fix a specific rate, the Commission must find the proposed increase to be not justified and require a continuation of the existing rate; otherwise the statutory requirement as to burden of proof is transgressed.

Secondly, the Commission finds that ex-barge traffic should be treated the same as ex-truck traffic under Section 1. But the Congress restricts Section 6(11)(b) to ex-water traffic and makes special provision therefor. This marks an intention to treat ex-water traffic different from ex-truck traffic insofar as proportional rates are concerned. This failure to proceed in accordance with correct legal principles affords an additional reason for enjoining the Commission's order.

The fact that the Commission proceeded in an investigation and suspension case rather than upon formal complaint requesting the exercise and the power conferred by Section 6(11)(b) is without significance. In *Chicago, R. & P. R. Co. v. United States*, 274 U. S. 29, 36-7, this Court pointed out that specific reference to Section 6(11)[32] in a formal complaint, or in an order for investigation entered on the Commission's own motion, is not a condition precedent to the consideration by the Commission of a case under that section. In *United States* v. *New York C. R. Co.*, 272 U. S. 457, 462, this Court held that a formal complaint is not a prerequisite to the exercise by the Commission of the jurisdiction conferred on it by Section 6(11) and that it may, on its own motion, investigate and act upon any matter which may be the subject of complaint.

[31a] *Infra*, p. 37.

[32] At that time it was Section 6(13).

In *Sugar from Gulf Coast Port Groups to Northern Points* (1939), 234 I. C. C. 247, 251, the Commission properly said that an investigation and suspension proceeding "opens for consideration the lawfulness of the suspended rates under all provisions of the act."

VII. The basic finding of the Commission as to the effect of the proposed change on reshipments of ex-barge grain via rail is without support in the evidence.

Much of the evidence received by the Commission was directed to the prospective effect of the proposed change upon interested shippers and the traffics involved. The question of the effect upon the traffics is an extremely important consideration in the determination of reasonable rates since, by Section 15a(2), the Commission is specifically directed to "give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed."

In the report of the Commission on reconsideration of December 1, 1941, the following finding was directed to the point under discussion (R. 53):

> "The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators."

In a foregoing section of this brief (p. 24 *et seq.*) and in Appendix B hereto (p. 117 *et seq.*) we summarize the undisputed evidence on the point. All of that evidence is directly contrary to the finding of the Commission and the District Court so found. (R. 1670-1)

Counsel for the Commission cites no evidence to support the finding of the Commission.

The eastern railroad appellants assume that the Commission took into consideration the fact that the combined barge-rail rates on the local basis to some few points in Central territory, but not to any point in eastern trunk-line territory, are lower than the all-rail combinations. If that comparison were the basis for the finding, it was not so stated by the Commission. Furthermore that comparison does not, even indirectly, support the finding as to any destination other than the few mentioned in Central territory. However, the finding is emphatic as including eastern trunk-line territory.

Furthermore, the facts recited above and in Appendix B (*infra* p. 117 *et seq.*) show that the movement of ex-barge grain from country origin to final destination is in nowise affected by a comparison of the aggregate barge-rail rates with the aggregate all-rail rates, but is controlled entirely by the separately stated rates available to the traffic at the time of reshipment from Chicago.

There is no question here as to the weight of the testimony. The finding of the Commission is not supported by any evidence and is directly contrary to all the evidence on the point.

VIII. The order of the Commission is not supported by essential preliminary findings sufficient to disclose a rational basis therefor.

A. THE ERRORS OF LAW DEVELOPED AND POINTS II TO VII, INCLUSIVE, RENDER THE ORDER INVALID, REGARDLESS OF THE REASONS WHICH LED TO ITS ENTRY.

The proceeding before the Commission involved three distinct questions: (1) Did the eastern railroads bear the burden of proof of demonstrating that the proposed increase in the proportional and reshipping rates as applied

to ex-barge grain would be just and reasonable under Section 1? (2) Would the proposal result in unjust discrimination between the shippers of ex-barge grain, on the one hand, and the shippers of ex-rail and ex-lake on the other hand, as defined in and prohibited by Section 2? and (3) Would the proposal result in the discrimination in rates as between connecting lines which is prohibited by Section 3(4)?

Thus far, we have shown that the Commission committed the following errors of law in disposing of these questions: In the case of the first question, the Commission erred because, (a) its finding as to the effect of the proposed adjustment on reshipment of ex-barge grain by rail is without support in the evidence; because (b) it exceeded its authority in predicating its finding as to the reasonableness of the local rates as applied to ex-barge grain on a comparison of the barge-rail combinations with the all-rail combinations; and because (c) it misconstrued and misapplied the governing statute when it failed to act under Section 6(11)(b) and failed to hold the respondent carriers to the burden of proof proposed by Section 15(7).

In disposing of the second question, the Commission erred because it construed the phrase "substantially similar circumstances and conditions" in Section 2 as embracing differences which related wholly to the rates and services of inbound carriers, whereas, properly construed, that phrase applies only to the services of the outbound carriers.

In disposing of the third question, the Commission erred because it construed Section 3(4) of the Act as not prohibiting a difference in reshipping rates conditioned on the mode of transportation utilized by the traffic in reaching the reshipping point.

If appellees are correct in any one of these contentions,

the District Court was right in enjoining the order even though the report provides sufficient reasons therefor in all other respects. Consequently, much of the argument contained in the briefs of the appellants does no more than beg the question. The emphasis in the briefs of appellants is on the alleged complicated nature of the rate structure, and on the alleged propriety of an administrative regulation which presumably considered desirable the imposition of a rate handicap and disadvantage on barge service and on the shippers of ex-barge grain. Such briefs treat the questions of statutory construction presented by appellees as if subordinate and in no wise controlling upon the validity of the order. This ignores the basic proposition that the Commission must at all times proceed within the limits of its authority and, if it has failed to do so, its order must be enjoined regardless of whether the ends which it sought to attain are meritorious.

With this background we come to consider whether, *wholly apart from the errors heretofore discussed*, the order of the Commission is supported by essential preliminary findings sufficient to disclose a rational basis therefor.

B. THE DETAIL OF THE RATE STRUCTURE IS NOT THE FOUNDATION FOR THE ORDER.

This case does not, as the applicants would have this Court believe, involve a complicated rate structure. The proposal of the carriers is fairly simple. It is to deprive ex-barge grain of the proportional and reshipping rates on which that traffic has moved for many years, and this deprivation is conditioned *solely* on the fact that the traffic arrives at the reshipping point via the Illinois waterways. Even here, the eastern railroads make an exception which is completely inconsistent with the contention that the all-rail rate structure is so complicated as well as so

sensitive as to be inappropriate for ex-barge traffic. By that exception, it is proposed to continue the Note 20 proportional to the territory east of Buffalo and Pittsburgh, and the trans-Mississippi proportional to Central territory, on shipments moving from Kansas City, Mo., to Chicago under certain port-to-port rates on the grain and grain products which the Inland Waterways Corporation had on file with the Commission when the proposal was made.[33]

Laying aside this exception, the tariff restriction under investigation by the Commission was not conditioned on the origin territory from whence the traffic came. Nor was the assailed restriction conditioned on the level of the rates paid to reach the reshipping point. Under the terms of the proposed tariffs, the proportional and reshipping rates will be denied to all ex-barge grain, with the single exception above noted, *regardless of origin and regardless of the inbound rates paid.* These simple facts render meaningless the argument of appellants that the structure of proportionals which vary, dependent upon the ex-rail origins of the grain, has some mysterious relation to the proposal under investigation. The fundamental weakness of that argument is also marked by the fact that to destinations east of the Buffalo-Pittsburgh line none of the proportionals from Chicago vary according to the western origins of the grain. Rather a single proportional is provided, not only for all ex-rail grain regardless of origin, but also for all ex-barge and ex-lake grain.

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[33] Published in Item 3632 of Federal Barge Lines' Freight Tariff No. 31-J, I. C. C. No. 148, supplements thereto or successive issues thereof (Exhibit 1, p. 7 for the proposed trans-Mississippi application and page 22 for the proposed Note 20 application (R. (ex. vol.) pp. 7, 22).

C. THE FINDING AS TO THE REASONABLENESS OF THE LOCAL RATES, AS SUCH, DOES NOT SUPPORT AN ORDER DIRECTED TO SEPARATELY ESTABLISHED PROPORTIONAL AND RESHIPPING RATES.

We have heretofore shown, on the authority of *Interstate Commerce Commission* v. *B. & O. R. Co.*, 145 U. S. 263, 277, that a rate may be perfectly reasonable under Section 1 and yet be unlawful because discriminatory under Sections 2 and 3. Consequently, no matter what the Commission may have found as to the reasonableness of the rates in issue, such findings afford no support for the ultimate conclusion that the rates are not unlawful under Sections 2 and 3(4).

Furthermore, the preliminary finding which the Commission did make on the matter of reasonableness is inadequate to support a conclusion under Section 1. That finding in the report on reconsideration reads (R. 52):

> "* * * The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory."

A somewhat similar statement in the report of Division 2 cites a number of Commission cases. (R. 18, p. 366)

The argument of appellants that the proposed change would result in a reasonable rate structure finds no support in the finding above quoted because the Commission cases referred to did not involve what this case involves, *i. e.*, the reasonableness of a separately established proportional and reshipping rate as distinguished from a reasonable through rate from country origin to final destination. Finding No. 16 of the District Court is in line

with the proposition just stated. (R. 1670) An analysis of the cases cited by the Commission shows that the finding of the District Court was right. Those cases are summarized in Section 1 of Appendix "C" hereto. (*Post* pp. 122-127) Section 2 of Appendix "C" rounds out the picture by summarizing cases in a different group in which the Commission has given independent consideration to the separately established proportional, reshipping, and ex-lake rates in the territory east of Chicago. None of the cases in the latter group approves a proportional, reshipping, or ex-lake rate which is as high as the sixth-class rates.

I. THE FINDINGS IN THE REPORT OF DIVISION 2 AS TO THE ALLEGED DISRUPTION OF THE RATE STRUCTURE DO NOT SUPPORT THE ORDER OF THE COMMISSION ON RECONSIDERATION.

Appellants repeatedly urge that the order of the Commission was required to prevent some undefined disruption of the all-rail rate structure. Since the report of the Commission on reconsideration did not predicate its ultimate conclusion on any such preliminary finding, it is perhaps unnecessary to deal with the point.

However, we do offer these observations: The report on reconsideration was entered after the Commission had considered petitions for reconsideration which urged that the findings of Division 2 as to alleged disruption of rate structure were unsupported by the evidence, except to the extent that the advent of low-rated barge transportation had induced western lines to establish a sub-normal basis of inbound rates via rail to Chicago from a limited area. Consequently, when the Commission failed to affirm the findings of Division 2 as to this matter, the expressions contained in that report of Division 2 must be deemed to have been withdrawn. *New England Divisions case*, 261 U. S. 184, 203.

The record contains no evidence as to any actual, or prospective, change in any rail rate on grain to a destination to the east of Chicago, the only destination territory to which apply the rates in issue. There is no evidence that any shipper from an intermediate origin in Indiana, Michigan, or Ohio to the east has complained of the existing application of proportional and reshipping rates to ex-barge grain, or has urged that any of such eastern rates should be changed or reduced by reason of that application.

Appellees agree that the low rates via barge on the Illinois River have induced the competitive basis of intrastate rates maintained by western lines.[34] That competitive situation will obviously continue so long as there is any substantial barge movement. However that competition exhausts itself on the inbound haul to Chicago. We respectfully assert that a desire on the part of the railroads and of the Commission to foster inbound transportation by rail, rather than by barge, affords no rational basis for the order directed to outbound rates. The carrying into effect of that desire is not only in direct contravention of the National Transportation Policy but it also flouts the

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[34] The miles of railroad and the stations served by lines in the territory from whence this depressed adjustment is maintained by rail are as follows: *western lines*: the Wabash Railroad, 95 miles serving 24 stations; the Alton Railroad, 149 miles serving 38 stations; the Aichison, Topeka & Santa Fe Railroad, 112 miles serving 28 stations; the Chicago, Burlington & Quincy Railroad, 400 miles serving 101 stations; the Chicago & Eastern Illinois Railroad 55 miles, serving 17 stations; the Chicago Great Western Railroad serving 84 miles serving 19 stations; the North Western Railroad 210 miles serving 53 stations; the Chicago Rock Island & Pacific Railroad serving 124 miles serving 25 stations; the Illinois Central Railroad serving 204 miles serving 53 stations, and the Chicago, Milwaukee & St. Paul & Pacific Railroad, 220 miles serving 48 stations.

In addition, the Elgin, Joliet & Eastern Railroad, *a belt line* around Chicago, which reaches Chicago over a line through Indiana operates 98 miles in this territory, serving 17 stations.

The only *western segments of eastern lines* in this territory are operated by the New York Central and Michigan Central combined, 123 miles (erroneously reported as 23) serving only 49 stations. (R. 1411-12)

rule of reason. Compare *Mississippi Valley Barge L. Co. v. United States*, 292 U. S. 282, 288.

The existing disturbance of the inbound rail rate structure to Chicago cannot be avoided unless the eastern lines are permitted to establish reshipping rates on ex-barge grain so extortionate and discriminatory as to kill off inbound transportation via barge. Shippers located along the Illinois River must be denied the natural advantages of their location which makes low-cost barge service available to them. Shippers of ex-barge grain from Chicago must be denied an equality of charges with shippers of ex-lake and ex-rail grain. Regulation must be administered solely in the interest of the railroads who are thus made the masters, rather than the servants, of the shipping public. The mere statement of these propositions indicates that the predicate for the order on which appellants rely is wholly unrelated to a proper discharge by the Commission of its administrative function.

E. THE FOURTH SECTION OF THE ACT DOES NOT SUPPORT THE COMMISSION'S ORDER.

To destinations east of Buffalo and Pittsburgh the local rates via rail from Chicago are uniformly 8.5 cents in excess of the proportional or reshipping rates via rail to the same destinations. In that situation, the aggregate of an inbound charge and an outbound charge will be less than the local rate from Chicago in all instances where the inbound charge is less than 8.5 cents. The Commission in its report on reconsideration notes that the barge rate from Morris to Chicago is only 2.75 cents and finds that such a rate, when combined with the proportional rate to the east is "in contravention of the fourth-section rule." (R. 52) Much is made of this situation in all of the briefs of all appellants.

Section 4(1) of the Interstate Commerce Act, as in effect at the time of the hearings and as in effect after amendment by the Transportation Act of 1940, is reproduced in Appendix A hereto.

The question to be discussed is whether or not this alleged departure from the long-and-short-haul rule of the fourth section provides a rational basis for the order here under review. We respectfully submit it does not for the following reasons:

(1) The Fourth Section rule does no more than require that the rate from the intermediate point be not higher than the rate from a more distant point to a common destination. Under the rates as approved by the order of the Commission, the combination barge-rail rates will, in all instances, be higher than the local rate from Chicago by the amount of the inbound rate. Plainly, no principle in the Fourth Section requires that result. If the Fourth Section rule had in fact been used by the Commission as its yardstick, it would have found that the proportionals on ex-barge grain should not exceed rates which, when combined with the inbound rates via barge, were not less than the local rates from Chicago. Such rates would be lower than the local rates by an amount equivalent to the inbound rate via barge.

(2) The rates of the Inland Waterways Corporation from Kansas City to Chicago are, in all instances, in excess of 8.5 cents. The combination barge-rail rates from Kansas City are never less than, but are always in excess of the local rates from Chicago. Consequently, the finding of the Commission not only failed to provide a rational basis for applying the full local rate on ex-barge grain from Kansas City, but, in addition, is without support in the evidence.

(3) The alleged departures from the Fourth Section rule are not the result of the present proportional and reshipping rates, but are wholly due to level of the inbound rates via water. To use the Fourth Section rule as a yardstick for outbound rates via rail is a direct attack on the principle declared by the National Transportation Policy that the inherent advantage of low cost water transportation should be reflected in the rates paid by the shipping public.

Consider the situation as if there were no barge transportation. In that event, a 26-cent proportional and reshipping rate from Chicago is accepted by carriers and shippers alike as entirely satisfactory and appropriate under every section of the Act. This is so even though the Pennsylvania Railroad performs more service under that rate, as measured by distance, than it performs in transporting traffic from directly intermediate origins on the same line in Indiana and Ohio to New York. That disparity between the proportional and reshipping rates from Chicago to the east, on the one hand, and the local rates from intermediate origins to like destinations, on the other hand, was approved by the Commission in *Baltimore Chamber of Commerce* v. *B. & O. R. R. Co.* (1912), 22 I. C. C. 596, and has never since been questioned.

The only change in the picture comes from entrance of the Mechling Barge Line. The low cost barge services of that carrier permit it to bring grain from Morris to Chicago for a rate of 2.75 cents as against the interstate rate of 9.5 cents charged for railroad transportation. There has been no change in the rates or the services of the Pennsylvania Railroad east of Chicago. There has been no change in the competitive situation of the shipper at the intermediate origin at Indiana or Ohio, since he must sell in New York in competition with a

26-cent proportional rate from Chicago, regardless of whether or not the grain arrives at Chicago via barge, via rail, or via lake. (R. 1567) The shipper from Indiana and Ohio is not disadvantaged by the fact that the low cost barge transportation available to the farmer at Morris gives him a better net price.[35] (R. 1568-9) These matters considered, it plainly follows that the Fourth Section rule provides no rational basis for an approval of a proposal by the Pennsylvania Railroad to increase its proportional and reshipping rate on ex-barge grain. The resulting blockade against the reshipment of ex-barge grain via rail would help neither the Pennsylvania Railroad nor any shipper on its line east of Chicago.

(4) If the Fourth Section rule requires that ex-barge grain be penalized, then ex-lake grain should be subjected to a corresponding penalty. The ex-lake rate of 26 cents from Chicago to New York applies on grain brought in via lake from any origin, even though trucked to the point where it is loaded into a lake steamer. (R. 280) The combination of the lake rate from Duluth to Chicago of 6.25 cents plus the proportional and reshipping rate beyond of 26 cents equals 32.25 cents, which is less than the local rate from Chicago. That is equally in contravention of the Fourth Section rule.

The lake rate from Duluth of 6.25 cents also applies to Buffalo. From Buffalo to New York, the ex-lake rate on export traffic is 10.5 cents and the local rate on export traffic is 23 cents. (Ex. 70; R. (ex. vol.) p. 118) The lake-rail combination in this instance of 16.5 cents is substantially less than the local rate from the reshipping point. Yet the Commission approves rates on ex-lake grain lower than local rates.

(5) Congress did not intend that a railroad proportional and reshipping rate should be increased because

[35] See also evidence of witness Burwash (*supra*, p. 13)

that rate, in combination with a separately established and controlled water rate from beyond, aggregated less than the local rate from the reshipping point. This is evidenced by the amendment to Section 4 contained in the Transportation Act of 1940. (54 Stat. 904) Section 6(a) of the Transportation Act amended paragraph 1 of Section 4 so as to include common carriers by water subject to Part III therein. Congress further provided in Section 6(b) of that Act as follows:

> "In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section. In the case of a carrier not heretofore subject to the provisions of such paragraph, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed, by reason of the provisions of such paragraph, as amended by subsection (a) of this section, prior to six months after the enactment of this Act, or in case application for the continuance of any such existing rate, fare, or charge is filed with the Interstate Commerce Commission within such six months period, until the Commission has acted upon such application."

The first sentence in the foregoing paragraph deals with the proportional and reshipping rates of the eastern railroads. Those rates were lawfully in effect at the time the Transportation Act was enacted. Congress appreciated that rates via barge are commonly on a substantially lower basis than rates via rail. Therefore, it took pains to provide that no railroad rate need be changed in order to comply with Section 4(1) as amended, even though that rate in combination with a water rate from beyond produced an aggregate less than the railroad rate from an intermediate origin on the water-rail route.

(6) The final, and perhaps the conclusive answer on this point, is that the Fourth Section, no matter how construed and applied, cannot be used as a cloak to cover the discriminations against shippers and against connecting carriers which are prohibited by Sections 2 and 3(4) of the Act. Just because rates are in strict conformity to Section 4(1) does not stamp them as free from discriminations in every other respect.

F. THERE IS NO FINDING TO INDICATE THE EXTENT TO WHICH PROPORTIONAL AND RESHIPPING RATES SHOULD VARY DEPENDENT UPON THE CHARACTER OF THE INBOUND SERVICES AND THE RATES ASSESSED THEREFOR.

The finding of the Commission that proportional and reshipping rates are in their essence balances of through rates which may be "determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service" (R. 54) is left dangling in the report of the Commission on reconsideration. That is to say, there is no preliminary finding in the report of the Commission as to what should be the difference between the outbound rate on ex-barge grain, on the one hand, and the outbound rate on ex-lake or ex-rail grain, on the other hand, in order to reflect the differences which the Commission said should control the measure of the outbound rates.

The water services here involved are performed by various barge lines and by various lake lines. The water hauls vary from a short haul from Morris, Ill., up to much longer hauls from Kansas City, Mo., and from Duluth, Minn. The water rates cover a wide range and are 2.75 cents from Morris, 6.25 cents from Duluth and 10.75 cents from Kansas City.[36]

If these various differences require a difference in the measure of the reshipping rates, the amounts of the rate variations are susceptible of determination and should

[36] See page 8, *supra*.

have been stated. Furthermore, the Commission should have explained why a 26-cent proportional rate is appropriate for ex-lake grain which is received inbound on a 6.25-cent rate, while a 34.5 cent rate is appropriate for ex-barge grain which is received inbound on a 2.75 cent rate, as well as ex-barge grain received inbound on a 10.75 cent rate.

This is not a matter of insisting that the Commission should disclose each detail in its reasoning. It is a matter of insisting that the final conclusion of the Commission should be predicated on a rational theory which is plain on the face of the report. The order here assailed is not supported in this respect. Consequently, another reason is afforded for enjoining the Commission's order.

Conclusion.

Upon the ultimate question for determination in this Court, *i. e.*, the validity of the Commission's order, it appears that the Commission did not act within its authority.

The errors of law committed by the Commission may be summarized as follows:

The Commission misconstrued and misapplied Section 3(4) in finding that a discrimination in rates as between connecting carriers is justified by a difference in the nature of the inbound services and a difference in charges assessed by the inbound carriers for their respective services.

The Commission misconstrued and misapplied Section 2 in holding that differences in the matter of inbound services, rates, and carriers, justify a difference in charges assessed against shippers for identical outbound services.

The Commission misapplied Section 1 of the Act (a) in determining the reasonableness of the rates to be applied;

on a reshipment of ex-barge grain upon a consideration of the combination through rates; (b) in failing to hold the railroad respondents to the burden of proof imposed by Section 15(7) when considered in connection with Section 6(11); and (c) in making findings which are without support in the evidence and are contrary thereto.

Finally, the order of the Commission is deficient in that it lacks essential basic findings sufficient to disclose a proper application of the statutory standards by which it must determine the lawfulness of rates under Sections 1, 2, and 3 of the Act.

Upon these considerations, appellees respectfully submit that this Court should affirm the final decree of the District Court.

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Appendix A.

Statutes Cited.

(Unless otherwise indicated, the statutes as reproduced are those presently in effect as amended by the Transportation Act of 1940.)

THE NATIONAL TRANSPORTATION POLICY

(Act September 18, 1940, c. 722, Title 1, Section 1, 54 Stat. 899, Title 49 U.S.C.A., preceding Section 1.)

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Part I of the Interstate Commerce Act.

SECTION 1(1)(a) (TITLE 49, U.S.C., SEC. 1(1)(a)).

"(1) That the provisions of this chapter shall apply to common carriers engaged in—

"(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment:

* * * * *

"* * * from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States."

SECTION 1 (5)(a) (TITLE 49, U.S.C., SEC. 1(5)(a)).

"(5)(a) All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

SEC. 2 (TITLE 49 U.S.C., SEC. 2).

"If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him

or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

SECTION 3(1) (TITLE 49, U.S.C., SEC. 3(1)).

"(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

SEC. 3(4) (49 U.S.C., SEC. 3(4)).

SECTION 3(3) (Title 49, U.S.C., Section 3(3)), prior to September 18, 1940, read as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this chapter, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

By the amendments of September 18, 1940, this paragraph was changed to Section 3(4) and its language to read as follows:

"(4) All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter of any common carrier by water subject to Part III."

SECTION 4(1) (TITLE 49, U.S.C., SEC. 4(1))

Section 4(1) of Part I of the Interstate Commerce Act (U.S.C., Title 49, Section 4(1)) prior to the Transportation Act of 1940, approved September 18, 1940, read as follows:

"(1) That it shall be unlawful for any common carrier subject to the provisions of this chapter to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part, but this shall not be construed as authorizing any common carrier within the terms of this chapter to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission

may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section;" * * *

Section 6 of the Transportation Act of 1940 (54 Stat. L. 904) reads as follows:

"LONG AND SHORT HAUL PROVISION."

"Sec. 6(a) Paragraph (1) of section 4 of the Interstate Commerce Act is amended to read as follows:

'(1) It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section, but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *And provided further*, That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the

Commission shall permit such tariffs to become effective upon one day's notice.

"(b) In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reasons of the amendments made to such paragraph by subsection (a) of this section. In the case of a carrier not heretofore subject to the provisions of such paragraph, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed, by reason of the provisions of such paragraph, as amended by subsection (a) of this section, prior to six months after the enactment of this Act, or in case application for the continuance of any such existing rate, fare, or charge is filed with the Interstate Commerce Commission within such six months period, until the Commission has acted upon such application."

SECTION 6(1) (TITLE 49, U.S.C., SEC. 6(1))

"(1) Every common carrier subject to the provisions of this chapter shall file with the commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules

or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this chapter."

SECTION 6(11) (49 U.S.C., SEC. 6(11)).

"(11) When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passenger or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right-of-way, or by directing either or both the rail and water carrier, individually or in connection with one another to construct and connect with the lines of the rail carrier a track or tracks to the dock. The commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: *Provided*, That construction required by the commission under the provisions of this paragraph shall be subject to the same restrictions as to findings

of public convenience and necessity and other matters as is construction required under section 1 of this chapter.

(b) To establish proportional rates or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

SECTION 13(1) (TITLE 49, U.S.C., SEC. 13(1)).

"(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

SECTION 13(2) (TITLE 49, U.S.C., SEC. 13(2)).

"(2) Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commissions sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide."

SECTION 15(1) (TITLE 49, U.S.C., SEC. 15(1)).

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the trans-

portation of persons or property as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

SECTION 15(7) (49 U.S.C., SECTION 15(7)).

"(7) Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and deliv-

ering to the carrier or carriers affecting thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

SECTION 15a (TITLE 49, U.S.C.A., SECTION 15a).

"(1) When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

"(2) In the exercise of its power to prescribe just

and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

Part III of the Interstate Commerce Act.

SECTION 302(d) (TITLE 49, U.S.C., SEC. 902(d)).

"(d) The term 'common carrier by water' means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, except transportation by water by an express company subject to chapter 1 of this title in the conduct of its express business, which shall be considered to be and shall be regulated as transportation subject to chapter 1 of this title."

SECTION 303(b) (TITLE 49, U.S.C., SECTION 903(b)).

"(b) Nothing in this chapter shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel. This subsection shall not apply to transportation subject, at the time this chapter takes effect, to the provisions of sections 843-848 of Title 46, as amended."

SECTION 305(c) (TITLE 49 U.S.C., SECTION 905(c)).

"(c) It shall be unlawful for any common carrier by water to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic in any respect whatsoever; or to subject any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description. Differences in the classifications, rates, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provision of this chapter and chapters 1 and 8 of this title."

SECTION 305(d) (TITLE 49, U.S.C., SEC. 905(d)).

"(d) All common carriers by water shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this subsection the term 'connecting line' means the connecting line of any common carrier by water or any common carrier subject to chapter 1 of this title."

SECTION 306(a) (TITLE 49, U.S.C., SEC. 906(a)).

"(a) Every common carrier by water shall file with the Commission, and print, and keep open to

public inspection tariffs showing all rates, fares, charges, classifications, rules, regulations, and practices for the transportation in interstate or foreign commerce of passengers and property between places on its own route, and between such places and places on the route of any other such carrier or on the route of any common carrier by railroad or by motor vehicle, when a through route and joint rate shall have been established. Such tariffs shall plainly state the places between which property or passengers will be carried, the classification of property or passengers and, separately, all terminal charges, or other charges which the Commission shall require to be so stated, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates, fares, or charges, or the value of the service rendered to the passenger, shipper, or consignee."

Section 90 of the Railway Clauses Consolidation Act of 1845, 8 & 9, Vict., ch. 20:

"Sec. 90. And whereas it is expedient that the company should be enabled to vary the tolls upon the railways so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties, or for the purpose of collusively or unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful therefore, for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect to all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances, and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person traveling upon or using the railway."

Appendix B.

SUMMARY OF EVIDENCE WHICH IS DIRECTLY CONTRARY TO FINDING OF THE COMMISSION THAT THE PROPOSED CHANGE WOULD NOT PROHIBIT THE RESHIPMENT OF EX-BARGE GRAIN VIA RAIL FROM CHICAGO TO THE EAST.

Grain purchased by these appellees at Chicago is purchased at a delivered price, the cost incurred in the inbound transportation being at the expense of the seller. Consequently, such inbound transportation costs directly affect the net price received by the seller at his country shipping station. (R. 1527, 1534)

All grain of the same grade and species comes to a common value at Chicago. (R. 1384, 1527, 1558, 1634) The appellees pay the same price *delivered* at Chicago for ex-barge as is contemporaneously being paid for ex-rail and ex-lake grain presently entitled to a later reshipment via rail on the reshipping rates. (R. 1383, 1528, 1626) As a result, the country seller obtains a higher net price when he ships to Chicago via barge than via rail, since the inbound barge rates are substantially lower than the inbound rail rates from the same origin. For example, the interstate rail rate to Chicago from Morris, Illinois, is 9.5 cents as compared with 2.75 cents via barge. (R. 18, p. 361) While the barge movement incurs certain accumulation and handling costs not incurred in connection with a rail inbound movement, the net price to the farmer in the country is greater by from 2.7 to 3.45 cents *per bushel* when the inbound move is via barge than when it is via rail at the interstate railroad rate. (R. 18, p. 361)

Looking now to the resale and reshipment, the following additional facts are shown in the evidence and are not dis-

puted: Ex-barge, ex-rail, and ex-lake grain are not only bought at the same price, but they are sold at the same price. (R. 1568, 1633) Grain selling prices in the east are named on a *delivered* (to an eastern destination) basis, and are directly predicated on the cost of transporting the grain from Chicago to destination, *i. e.*, on the freight rate from Chicago to destination to which the grain is entitled under the tariffs. (R. 1520-21, 1568)

The possibility of making a particular sale or of reaching a particular destination is directly affected by the freight rate structure out of the market. (R. 1558, 1618) The reshipping rate made available by reason of the inbound billing was characterized as the "decisive factor that determines what we can do with the corn after it gets into Chicago." (R. 1558)

The Chicago elevator receives no greater profit per bushel in merchandising grain received via barge than in merchandising grain received via rail. (R. 1626) The grain business is done on a margin of one-quarter of a cent per bushel;[1b] that is, a difference in price in that amount will affect a sale. (R. 1635)

If ex-barge and ex-rail grain must be sold for the same delivered price at New York (R. 1568), and if the freight paid, or the freight allowed to destination, is 8.5 cents per hundred pounds greater on the ex-barge grain than on the ex-rail grain, the Chicago elevator must be in a position to sell ex-barge grain at a price which will net him at Chicago 8.5 cents per hundred pounds less than the price which he would net from a corresponding lot of ex-rail grain. According to the evidence, there is no circumstance which would permit that to be done. (R. 1633) Both ex-

[1b] While freight rates are named in cents per hundred pounds, grain prices are commonly named in bushels. The weight per bushel of corn is 56 pounds and wheat or soybeans is 60 pounds. (R. 1254-5)

barge and ex-rail grain have the same value in Chicago. (R. 1383, 1385, 1528, 1558, 1626) The rate basis used in selling ex-barge grain must be and is the same as used in selling ex-rail grain. (R. 1568) The outbound rates from the market alone determine what can be done with grain after it is accumulated. (R. 1513-4) If the Chicago value is 50, and the rate basis required to make sale is 26, we have two factors which add to 76. Mathematically, it is impossible to make them add to 84.5.

Chairman Eastman noted in his dissenting opinion this disagreement between the facts shown in the evidence and the finding in the report of the majority. (R. 70)

Other facts of record which show that the direct effect of the proposed change would be a complete barrier against the transportation of ex-barge grain via railroad from Chicago to the east are as follows: Presently much grain is received in Chicago via truck and the tariffs of eastern lines do not now provide nor have they provided in the past, for proportional or reshipping rates on ex-truck grain. (R. 18, p. 364) Nevertheless, the local rates from Chicago to the east have not, within the knowledge of the witnesses before the Commission, moved a pound of grain of any kind. (R. 1371, 1578)

It was repeatedly stated, without contradiction, that if the proposed change becomes effective the only avenue by which ex-barge grain can ever move out of Chicago will be via lakes.[2b] (R. 1278-9, 1572) To quote a representative question and answer (R. 1566):

[2b] A large portion of the outbound movement from Chicago is via the Great Lakes, even as to grain entitled to proportional or reshipping rates. This is because the Great Lakes ordinarily provide a cheaper method of transportation from Chicago to Buffalo, New York, and to the territory east of Buffalo which can be reached via canal and via rail. A table shown in the appendix to the report of July 31, 1942 (R. 18, p. 384), shows that in the calendar years 1933 to 1939, inclusive, the total bushels of corn, wheat, oats, and soybeans reshipped from Chicago divided 301,004,000 bushels via lake and 322,362,000 bushels via rail.

"Q. (By Mr. Belnap) Now if the barge grain could not take the proportional rates to Eastern Trunk Line and New England territory, would every pound of that grain, other than what might be consumed here, necessarily move out of Chicago over the lakes?

"A. (By Mr. McClintock) I cannot conceive of it moving in any other direction; as the mere suspension or denying the reshipping rate as now in effect automatically places a penalty of 8½ cents a hundred against that grain, there is no conceivable manner in which the grain could be moved into consuming territory other than across lake."

Presently ex-barge grain is able to meet the competition of ex-rail and ex-lake grain in being distributed via railroad from Chicago to the east, and this has provided the rail carriers east of Chicago with an opportunity for handling some of the ex-barge traffic. (R. 1280)

Of course, during the four or five months in the winter of each year in which the lakes are closed to navigation, all shipments from Chicago must move via rail. However, even during the season of open navigation, there is a substantial volume of rail movement. A study made by the eastern railroads confined to corn from nearby Illinois territory shows that in the period May 1 to November 30, 1939, 14 per cent of the rail receipts were reshipped via railroad and 16 per cent of the barge receipts were so reshipped. (R. 18, pp. 366-7)

If the proposed change is made, the eastern lines will have no opportunity to compete with the lakes for ex-barge traffic (R 1280), and ex-barge grain traffic will have no opportunity to compete with ex-rail or ex-lake grain for reshipment in cases where a railroad movement is necessary to reach delivery point. (R. 1575, 1576) When this case was being heard in January, 1940, the Continental Grain Company, one of the appellees in this case, was in the

process of shipping a million bushels of ex-barge grain via railroad to Baltimore for export, and the evidence is that the sale in question could not have been made if the ex-barge grain had been denied the proportional or re-shipping rate. (R. 1548)

When the Great Lakes are open to navigation, ex-barge grain will still have an outlet from Chicago, although to a limited marketing area. To the eastern territory which must be reached by railroad from Chicago, ex-barge grain could not be sold in competition with ex-rail or ex-lake grain. (R. 1575, 1576-7) It is impossible, as a practical matter, to absorb a rate penalty on an outbound shipment of grain. (R. 1599) One witness for the Chicago elevators said that the proposal to increase the rate on ex-barge grain to the full local basis was the equivalent, for all practical purposes, of having no railroad rate at all on ex-barge grain. (R. 1566)

When we consider the four or five months during the winter when navigation is closed on the Great Lakes, the only thing that can be done with ex-barge grain in Chicago is to store it until navigation opens in the spring. That would result in congesting elevator space, at least to the point of preventing the normal turnover of that space, which would occur two, three, or four times within that period. (R. 1549, 1561-2)

Appendix C.

Section 1.

RATE CASES REFERRED TO BY THE COMMISSION AS FIXING A REASONABLE LEVEL OF RATES WITHIN OFFICIAL TERRITORY INVOLVED ONLY THROUGH RATES FROM COUNTRY ORIGINS AND DID NOT INVOLVE RESHIPPING RATES AS APPLIED TO TRAFFIC HAVING A PRIOR HAUL BY RAIL OR BY WATER.

Indianapolis Board of Trade v. *B. & O. R. R. Co.* (1927), 129 I. C. C. 675, involved through local rates from a limited number of country origins in Illinois and Indiana via Indianapolis to destinations to the east and south thereof. These rates were on the 6th class basis, that is, they were the same as the 6th class rates. Some of the through rates did not apply over routes through Indianapolis, and that was the subject of the principal complaint. The Commission declined to require the defendant carriers to establish additional routes and found upon the evidence that the rates complained of were not shown to be unreasonable or unduly prejudicial. Accordingly, the complaint was dismissed.

Grain and Grain Products (1928), 144 I. C. C. 497, involved local rates on grain from country origins in Ohio to destinations in West Virginia and Kentucky, and rates on grain from country origins in Illinois and Indiana to destinations in central territory and to destinations on the Chesapeake & Ohio Railway in West Virginia and Kentucky. The issues as to the rates from Illinois and Indiana were similar to those involved in the case immediately above cited, and that issue was similarly disposed of. As to the local rates from Ohio origins, the Commission found

that certain increases proposed therein by carriers had not been justified.

In *Valley Grain Co.* v. *Cleveland, C., C. & St. L. Ry. Co.* (1929), 159 I. C. C. 223; (1930), 167 I. C. C. 190, the rates involved applied from a country station, Wing, Illinois, to St. Louis, Missouri, Chicago, Illinois, Battle Creek, Michigan, and Louisville, Kentucky. The case largely involved the relation of rates from Wing to the rates from nearby country stations to the same destinations. The Commission found that none of the rates assailed were unreasonable but did find that the assailed rate relation as between Wing and nearby country origins resulted in undue preference and prejudice. Among the rates involved in that case was a 11-cent proportional rate from Wing to Chicago. The Commission disposed of the issues as to that rate without giving any consideration at all to the proportional rates from Chicago to the east.

In *Cooperative Elevator Co.* v. *Wabash Ry. Co.* (1933), 192 I. C. C. 583, were involved local rates from three country stations in Indiana to destinations in Ohio and Kentucky. The Commission found that the assailed rates were not unreasonable.

In *Goldcamp Mill Co., Inc.* v. *Akron, C. & Y. R. Co.* (1933), 195 I. C. C. 329, the complaint assailed the local commodity rates from origins in Ohio, Indiana, Illinois, Michigan, Missouri, and Wisconsin on grain, in carloads, milled in transit at Ironton, Ohio, and forwarded as products to destinations in West Virginia, and Kentucky on the Norfolk & Western and Virginian railways. Under the adjustment complained of, rates from any given origin were the same to a large destination blanket or group known as the Norfolk group. As a result, the rates to the nearby points in the destination group were higher than the corresponding 6th class rates, the latter being graded accord-

ing to distance. In that situation, the Commission found that the through rates which were higher than 6th class were excessive and unreasonable.

In *Grain and Products to Chesapeake & O. Branch Lines* (1933), 196 I. C. C. 751, the Chesapeake & Ohio proposed to increase its local rates on grain from origins in central freight association territory to destinations on branch lines in West Virginia and Kentucky to a level which would exceed the 6th class rates. The Commission found the proposal not justified and required the suspended schedules to be canceled.

In *Allen & Wheeler Co. v. Akron, C. & Y. Ry. Co.* (1937), 225 I. C. C. 179, was involved rates on grain from origins in central territory and in western states milled in transit at various points in Indiana, Ohio, Kentucky, and West Virginia and forwarded as products to destinations in Kentucky, Virginia, West Virginia, and Tennessee. The rates involved from origins in central freight association territory were one-factor local rates. From origins from west of Chicago the through rates assailed were made up of local rates to the first gateway, plus one or two proportional or reshipping rates beyond. The complaint centered on the one-factor rates from central freight association territory to the destinations, and on the proportional or reshipping rates east of Chicago and other western gateways to the destinations. This case is very similar to the *Goldcamp Mill Co., Inc.*, case, *supra*, in that the chief source of complaint was in applying a single rate from a given origin or reshipping point to a large destination group, this resulting in the through rates being higher than the 6th class rates to the nearby points in the destination group. The Commission followed its decision in the *Goldcamp Mill Co., Inc.*, case.

Section 2.

SUMMARY OF CASES INVOLVING AN INDEPENDENT CONSIDERATION OF PROPORTIONAL, RESHIPPING, AND EX-LAKE RATES WITHIN OFFICIAL TERRITORY.

In *Baltimore Chamber of Commerce* v. *B. & O. R. R. Co.* (1912), 22 I. C. C. 596, the Commission approved reshipping rates lower than local rates from Chicago to Baltimore, which reshipping rates then applied on ex-lake as well as ex-rail grain (Ex. 1), and dismissed a complaint in which the Baltimore Chamber of Commerce complained because the reshipping rates from Chicago to Baltimore were lower than the local rates from intermediate country stations in Illinois and Indiana.

In *Toledo Produce Exchange* v. *A. A. R. R. Co.* (1913), 27 I. C. C. 536, the Commission found that Toledo, Ohio, was entitled to a basis of ex-lake rates reasonably related to those maintained from other ports, and in a further report in the same case, 30 I. C. C. 498 (1914), it approved from Toledo to New York a reshipping rate on ex-rail grain of 13.5 cents and an ex-lake rate in the same amount as compared with a local rate of 15.5 cents.

In *Buffalo Grain Cases* (1917), 46 I. C. C. 570, it appeared that from Chicago the rates on corn to New York were 21.8 cents locally and 16.8 cents reshipping, and that, as compared therewith, the local rate from Buffalo was 11.6 cents and the ex-lake rate 9.82 cents. Upon complaint, the Commission found that these rates were not unreasonable or improperly related.

In *Peoria Board of Trade* v. *A., T. & S. F. Ry. Co.* (1919), 55 I. C. C. 42, which involved only all-rail traffic, the Commission found that reshipping rates from Peoria 2 cents higher than from Chicago met the requirements of the Act and that certain one factor through rates via

Peoria were excessive and unreasonable to the extent they exceeded the intermediate rates constructed by the use of such reshipping rates.

In *Ex-Lake Grain to North Atlantic Ports* (1939), 235 I. C. C. 415, the Commission fixed 10 cents as a minimum reasonable rate on ex-lake grain, in carloads, from Buffalo to New York, N. Y., for export. This is to be compared with the local rate from Buffalo to New York of 23 cents. (Exhibit 70)

In *Export Grain, C. F. A. Territory to North Atlantic Ports* (1940), 235 I. C. C. 655, the Commission refused to permit eastern lines to reduce the reshipping basis from Chicago to Baltimore on export grain from 16 cents to 12 cents per hundred pounds. Incidentally, the reshipping rate for which the eastern lines there sought approval is less than half of the reshipping rate which they seek in this case to apply on ex-barge grain. In that case the Commission noted on page 657 that the reshipping rates under consideration applied alike on ex-rail, ex-river, and ex-lake grain, and that throughout the report it treated all three kinds of traffic alike.

In *Oswego* v. *B. & O. R. R. Co.* (1928), 146 I. C. C. 293 (1929), 151 I. C. C. 717, the Commission required eastern lines to provide Oswego, New York, with an adjustment of ex-lake rates lower than local rates properly related to the ex-lake rate structure contemporaneously maintained from Buffalo.

In *Ex-Lake Grain from Ogdensburg to New England* (1935), 208 I. C. C. 385 (1935), 209 I. C. C. 500, the Commission declined to permit a proposed increase in ex-lake rates on grain from Ogdensburg, N. Y., to destinations in New England. Incidentally, in that case the Commission noted, at page 505, that the average 6th class rate from

Ogdensburg was 27 cents, and yet the ex-lake rate to Boston which the Commission said should not be increased was 16.6 cents. As indicated by that case, the Commission has never used 6th class rates as a yardstick for measuring the reasonableness of reshipping rates on ex-water traffic, although that yardstick may be quite appropriate where local rates alone are involved.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 175

INTERSTATE COMMERCE COMMISSION, ET AL.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF IN BEHALF OF APPELLEE, A. L. MECHLING, DOING BUSINESS AS A. L. MECHLING BARGE LINE.

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BRIEF IN BEHALF OF APPELLEE, A. L. MECHLING, DOING BUSINESS AS A. L. MECHLING BARGE LINE.

Opinions Below

The findings of fact and conclusions of law of the three-judge District Court (R. 1663-1676) are reported at 44 Fed. Sup. 368.

The majority and minority reports of Division 2 of the Interstate Commerce Commission are included in the record (following R. 18) and the majority and minority reports of the full commission is also included in the record (following R. 47). These reports appear respectively in 246 I. C. C. 353 and 248 I. C. C. 307.

Jurisdiction.

Jurisdiction rests on the Urgent Deficiencies Act, October 22, 1913, C. 32, 38 Stat. 208 (28 U. S. C. A. 47, 47a) and Section 238 of the Judicial Code, as amended (280 U. S. C. A. 345). The final decree below was entered April 16, 1942 (R. 1677); petition for appeal was filed and allowed on May 21, 1942 (R. 1679, 1681). Probable jurisdiction was noted by this court on October 12, 1942.

Questions Presented.

The rail service for taking grain east from Chicago is the same, regardless of how the grain got to Chicago. For years the eastern rails have charged for that service "proportional" rates (lower than local rates) regardless of whether the grain came to Chicago by rail, by lake steamer, or by river barge reaching Chicago via the Illinois Waterway. The eastern railroads proposed to cancel their proportional rates on all grain that had been brought to Chicago via the Illinois Waterway regardless of origin—continuing these proportional (lower) rates in effect, however, for grain brought to Chicago by rail and by lake steamer.[1]

The Commission held this lawful. The specially constituted District Court enjoined the order.

Did the Commission err in holding that the rate proposal in question violated Sections 1, 2 and 3 of the Interstate Commerce Act as amended, and did the Commission nevertheless have administrative discretion to hold that it did not?

Did the Commission discharge its full duty under Sections 6(11)b and 15(7) of the Act, and, if not, did the Commission nevertheless have administrative discretion to hold that it did?

1. And also continuing proportional rates on alfalfa meal brought from one point by one barge line.

Did the Commission make findings required to support its order?

Did the Commission take into consideration as justifying its order matters that did not do so, that had no rational tendency to support its order, and that it had no right to consider?

Is the finding that if the rate proposal became effective the barge-rail movement would not be prohibited, supported by the evidence?

Did the Commission fail to make findings and take evidence necessary to support its order under the National Transportation Policy and Section 3(4)?

In refusing to permit appellee to offer evidence addressed to the new statutory situation created by the amendment of the Act by the Transportation Act of 1940, and appellee's new status thereunder, did the Commission deny appellee a fair hearing as required by the statute, or as required by the due process requirement of the Federal Constitution, or act arbitrarily?

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STATEMENT.

The Established Rates and the Traffic.

Grain[1] comes to Chicago[2] by rail, by lake steamer, and by barge on the inland waterways.

After coming to Chicago this grain moves on east from Chicago by rail. (R. 18; 246 I. C. C. 353, 383-4.) Part of it goes east by lake during the seven months of open lake navigation. (Idem.)

The record shows in tabular form the quantities moving into and then out of Chicago, and the modes of transportation employed for the in-movement and the on-movement. (R. 18; 246 I. C. C. 353, Appendix I.)

It is a matter of common knowledge that this movement of grain to the Chicago market, and thence east constitutes one of the conspicuous "streams" of interstate commerce; the table mentioned gives it statistical definition as to corn, wheat, oats and soybeans.

The rates in question are rail rates for the movement of grain east from Chicago. The nature of rates that are and for years have been in effect, is stated by the District Court in the first finding. (R. 1663.)[3] Essential facts there appearing are that the established rail rates for the on-movement from Chicago include two general kinds of rates, "local" and "proportional"; and that the *local* rates are in all cases *higher* than the proportional. These "proportional" or "reshipping" rates[4] (lower than "local" rates)

1. "Grain" as used herein means grain, grain products and soy beans.

2. Other reshipping points in the Chicago region are involved. Chicago dwarfs the rest and was treated by the Commission as fully representative. Chicago is one of the great grain reshipping points of the world. (R. 18; 246 I. C. C. on 383-4.)

3. We do not find that appellants challenge this finding.

4. By virtue of the suspension of the proposed change in these rates and the agreement of the eastern rail lines who had proposed to change them, these established rates are still in effect, pending the outcome of this proceeding.

apply on grain that has been transported into Chicago from beyond. They apply to the on-movement east from Chicago.

The rail *service* for the on-haul east from Chicago of this re-shipped grain is the same—whether it came to Chicago by rail, by barge, or by lake steamer. (R. 54.) And the rail *rate* for the on-haul has been a proportional rate for years prior to the present proposal—regardless of whether the grain reached Chicago by rail, barge or lake steamer. (R. 1663; Finding 1.)

The Chicago elevators receive this grain as it comes in by rail, by lake steamer, and by river barge. From the Chicago elevators it goes east.

In order to engage the proportional (lower) rate level for movement east from Chicago, it is not required that the identical kernels of inbound grain be identified; the grain is all mingled in the elevators. This is true to an identical degree of grain brought in by barge, rail and lake steamer. It is required in order to engage the proportional rate for outbound shipment that the shipper shall show and surrender to a policing agency (called the Central Weighing and Inspection Bureau) inbound billing covering an equivalent amount of grain of the same kind that he is shipping east. This true of grain that has come to Chicago by rail, barge or lake steamer.

The Proposed Change in Rates Here in Question.

In this situation eastern railroads transporting grain east from Chicago proposed to change the established rail rates for the on-haul of grain that had been brought to Chicago. The nature of the change lies on the face of the schedules. It was stated by Commissioner Alldredge when the case was before Division 2 of the Commission:

> "If the suspended schedules should become effective the situation would then be that the present proportional rates would continue in effect on grain brought

> to Chicago by rail and by lake vessel, but the higher local rates would apply on grain brought in by barge over the Illinois waterways." (246 I. C. C. 353, 382; R. 18.)

This was also the finding of the Commission, which refers to

> "• • • the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point will be substantially the same." (R. 54.)

This was also the finding of the District Court (Finding 24; R. 1674):

> "If the proposed rates become effective, ex-barge grain will pay a greater charge upon re-shipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories."

Some language of Division 2 suggests that the proposal was there treated as though it relates only to rates on corn. This was not treating the proposal for what it is. There is no dispute that it relates to practically all kinds of grain, grain products and to soybeans. The fact again lies on the face of the proposed schedules.

The language of the proposed schedules was in form aimed at grain coming in over the Illinois Waterway, and both Division 2 and the Commission refer to grain arriving via the Illinois Waterway. (R. 18; 246 I. C. C. 253; 47.) The Illinois Waterway, as the map shows, is the link connecting the whole inland river system of the continent with Chicago. The record shows that grain comes to Chicago by barge from as far west as Kansas City on the Missouri River, as far south as New Madrid, Missouri, downstream from St. Louis, and as far north as Burlington, Iowa. (R. 1707, 1708; Ex. Vol., p. 101; 1722. Cf. Sec-

tion 309.) The chairman of the Commission said (the portion in parenthesis is supplied):

> "It is now proposed to cancel the application of these rates (viz., the established and presently effective proportional rate) on ex-barge traffic, even if it comes from such comparatively distant points as Kansas City and St. Louis, regardless of the length and nature of the inbound haul." (R. 73.)

Congress has spent millions in the improvement of our inland waterway system for navigation.[1]

On the Illinois River and Waterway alone, the investment of public money is about $60,000,000. (R. 18; 246 I. C. C. 353, 355.) River navigation for such cargo is by means of strings of barges moved by towboats. This elimination of navigation difficulties has made barge transportation of grain to Chicago commercially important. (Appendix 1 of the report of Division 2; R. 18; 246 I. C. C. 353, 358.)

The barge rates into Chicago are lower than the rail rates. The result is that farm producers having access to river transportation get more for their grain; Division 2 so found. (R. 18; 246 I. C. C. 353, 361.) One of the inherent advantages of water transport is low cost.[2] The benefit of low cost river transportation goes to the grain producer in the country. The Chicago buyer gets none of it. He pays the Chicago price, less the cost of bringing the grain to Chicago.[3]

The proposal is, as stated, to give, or withhold, the benefit of proportional rates going out of Chicago, depending on whether the grain comes in to Chicago by barge, or by rail.

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1. These appropriations have been made over a period of years by Public Acts of Congress of which this court has judicial knowledge.

2. Cf. legislative history of the River and Harbor Acts, and of the Transportation Act of 1940, hereinafter mentioned. The Inland Waterway Corporation was formed by Congress to develop low cost river transportation for the benefit of the public.

3. Appellants do not dispute this.

The eastern lines who propose this change in the established rate structure for the movement of grain east from Chicago put only one witness on the stand. (W. T. Tannehill.) He was cross-examined as to the reason why the railroads proposed this change in their rates, and left the subject here:

> "We made this proposal as I have stated several times, and filed these tariffs with the hope that we could drive this business off the water and back onto the rails where it belongs. * * *" (R. 266, 267.)

The nature (and amount) of the proposed charge bear no rational relation to any other purpose than that for which it was made—to "drive the business off the water and onto the rails." The Chicago buyer does not know to what eastern customer he will sell. But if he has to impose on his customers a higher price because he brought his grain to Chicago by barge, he is out of the market; a margin of a quarter of a cent will determine whether he or his competitor will get the sale. (R. 1635, 1558, 1618.) And the higher cost he would be forced to impose on his customer merely for having brought his grain to Chicago by barge would be from 1.5 cents to 7.5 cents for his customers in Central Territory, and 8.5 cents to New England and Eastern Trunk Line Territory—if the proposed schedules become effective. (R. 52.)

There is one exception to what has been said. The proposed schedules single out one product, from one point, when brought to Chicago by one barge line, and offer it the benefit of proportional rates east from Chicago, viz., packaged grain when brought from Kansas City by the Federal Barge Line.[1]

1. R. 1274; item 3622 of Federal Barge Lines Freight Tariff, No. 31-J I. C. C. No. 148; Exh. 1, p. 7 for the trans-Mississippi application; p. 22 for note 20 application; R. (ex. vol.), pp. 7, 22. Alfalfa meal, a grain product has moved on these rates. This application of proportionals will not apply otherwise; e. g., to wheat which has been shipped to Chicago from Kansas City. (R. Exh. 63; Ex. Vol. 101.)

Summarizing: The differentiations in rate treatment thus proposed by the eastern railroads are:

(1) Ex-barge grain and grain products shall pay the local rate, (viz., pay more) for shipment east from Chicago than ex-rail grain, regardless of the length and nature of the inbound haul:

(2) Ex-barge alfalfa meal transported to Chicago from Kansas City by any other barge line than Federal Barge Line shall pay more for shipment east than the same commodity brought in from the same point by Federal Barge Lines.

(2) Ex-barge grain shall pay more than ex-lake grain.

The Case Before Division 2 and the Full Commission.

Upon petition of various parties the commission exercised its powers under Section 15 of the Interstate Commerce Act and ordered a hearing on the proposed new rates. (R. 15.)

The established rates were not in issue. (R. 15.)

Initially the case came before Division 2 consisting of three commissioners, two of whom joined in a report most of which is devoted to an involved argument to the effect that the established tariffs, properly construed, never had applied to ex-barge grain. The third commissioner, dissenting from this departure from the matters set for hearing into the realm of construction of tariffs not in issue, found the proposed schedules to be unlawful. (R. 18; 246 I. C. C. 353.)

The eastern railroads who had made the rate proposal in question asked the full commission to reverse Division 2 with respect to the construction of their established schedules (R. 57), and the Commission did so, holding that under the established schedules proportional rates applied on ex-barge grain.[1] (R. 51, 52.) But the Com

1. The railroads had applied them to ex-barge grain for years. No question of tariff construction is raised here. (R. 51, 52.)

mission denied the petitions (R. 48) of shippers and a barge line and held that the proposed schedules abolishing the application in the future of proportional rates to ex-barge grain (while continuing them as to ex-rail and ex-lake grain) "cannot be condemned as unlawful under Sections 2 and 3 of the Act." (R. 55.) Four of the commissioners dissented. (R. 55, 76.)

The two commissioners who made the majority report of Division 2 point out that, before the present rate proposal was made, the western rails who compete with the barge lines for the inbound haul to Chicago have been publishing intrastate rates applying from some Illinois shipping points accessible to river transportation, which were lower than the interstate rates from the same points. The interstate rates from these water competitive origin points, for grain shipment to Chicago, were "said to be (sic) the normal basis reflecting the national grain rate structure." Division 2 follows this statement with a table. The table shows these intrastate rail rates to Chicago, lower than the interstate rates. (R. 18; 246 I. C. C. 353, 356.)

The rails put in these low intrastate rates (with authority only of state regulatory bodies, which could not authorize transit in interstate commerce) to get the business away from the barge lines; or, in the language of the report, to meet barge competition. But these low intrastate rates failed of their purpose. Division 2 says:

> "*Position of the western rail lines:* These lines maintain that the purpose of establishing the intrastate rates on corn, under which transit is prohibited, was to meet unregulated[1] barge competition. The practice of respondents[2] in permitting transit and the

1. The barge carriers were unregulated when the present rate proposal was made. But when the report of Division 2 was written they were regulated carriers under Part III of the Interstate Commerce Act, enacted by the Transportation Act of 1940.

2. The eastern rail lines who made the proposal here in question to deny proportional rates to ex-barge grain.

> application of the proportional rates east of Chicago has had the effect of nullifying the western lines' efforts." (246 I. C. C. 353 on 364.)

The purpose of this proposal to deny the application of proportional rates east of Chicago on ex-barge traffic was, admittedly, to drive the inbound barge traffic "off the water and back onto the rails." It was not made by the Commission. It involves a change in established rates.

Division 2 (not the Commission) referred later to the breaking down of the (rail) grain rate structure, as follows:

> "The western lines, supported by the eastern line respondents, also contend that if application of the proportional rates is to be continued on unregulated (sic) ex-barge traffic, the result will be a breaking down of the established through grain rate structure from west to east. The evidence already detailed *with respect to* the inability of the reduced intrastate rates on corn to accomplish their purpose in meeting the competitive barge charges supports this contention." (Our emphasis.) (246 I. C. C. 353 on 365.)

When the Division speaks of breaking down the (rail) grain rate structure by continuing proportionals on ex-barge traffic, it here says that in terms of the actual evidence, the thing it is talking about is this behavior of the rails in publishing intrastate rates "said to be" below the interstate rail rate base in order to get the business away from the barge lines. The remark of Division 2 concerning the breaking down of the grain rate structure, understood in terms of the evidence and record as stated by the Division is this: that the rails have yielded to the temptation to publish low rail rates in their efforts to eliminate barge line competition.

The only way hitherto suggested by which this temptation is to be removed from the rails by the present rate

proposal, is the way frankly stated by the rails themselves who made the proposal—viz., to "drive the business off the water and back onto the rails." That phenomenon, which the Division called breaking down the (rail) grain rate structure, would be eliminated—only to the extent that the barge lines were eliminated from the business.

Division 2 ignored Section 3(4) of the Interstate Commerce Act as amended, the new National Transportation Policy, and the fact that water carriers had by law been brought under the Commission's jurisdiction. It says:

> "Under the Interstate Commerce Act as amended September 18, 1940,* Section 3(1) of Part I, undue discrimination, prejudice or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful. Part III of the Act, applicable to water carriers is substantially the same. *It follows* that the prejudice alleged by the barge line, even if it existed, is not unlawful." (Our emphasis.) (R. 18 *et seq.*; 246 I. C. C. 353 on 363.)

Upon this analysis the Division concluded that the rate proposal in question, which would charge more for taking grain on from Chicago when it had come there via the barge lines, was "not shown to be unlawful." (R. 18 *et seq.*; 246 I. C. C. 353 on 363.)

On review of the report of Division 2, the Commission said nothing about "breaking down the grain rate structure." It said:

> "The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators." (R. 53.)

Division 2 did not so find; on the contrary, it found (as above quoted from its report) that the existence of water competition was tempting the rails to quote intrastate rates for grain said to be below the interstate rail base

* By the Transportation Act of 1940.

in order to get the business from the barge lines; that this effort had failed because ex-barge grain had proportional rail-rates out of Chicago; that the proposal to abolish these proportionals on ex-barge grain (at the same time leaving them in effect as to ex-rail grain) was not contrary to Section 3(1) of the Act as amended in 1940, and that *it followed* that it was not unlawful (ignoring Section 3(4)) of the Act as amended in 1940.

The Commission nowhere said that this rate proposal would not gravely injure and diminish the barge-rail movement. There has been no such contention.[1]

The full Commission dealt with the question of discrimination as follows:

> "Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory * * *.[2] This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or the ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under interstate rates, or grain which has forfeited its transit privileges.[3] To adopt protestants' premise would mean that all proportional rates lower

1. As appears below, we think that a finding that the barge-rail movement would not be *prohibited* by this diffegent rate treatment of ex-barge grain does not support a conclusion that the proposed rate treatment of ex-barge grain is not *discriminatory*. It is unquestioned that it would gravely injure and diminish the barge-rail movement. (See evidence in summary in the brief for Inland Waterways Corporation, *et al.*, Appendix B, pages 117-121. To the facts there set forth should be added the fact that the eastern lines, their witness said, made this proposal with intent to "drive this business off the water and back onto the rails," etc. (R. 296.)

2. Section 3(4), prohibiting interline discrimination drops all such qualifications as "undue" or "unjust" or "unreasonable" found in other provisions of the act; it prohibits "discrimination."

3. Ex-barge and ex-rail grain is treated *alike* in all these respects by present schedules. As to ex-truck grain, Congress made no such provision forbidding discrimination against it as it made forbidding discrimination against ex-rail grain. (Sec. 3 (4).) If there were discriminations against ex-truck grain in favor of ex-rail grain in existing schedules that were not in issue, the Commission does not point out how this would justify a further discrimination against ex-barge grain (also in favor of ex-rail grain) in proposed schedules that were in issue.

than local rates and differing from each other according to the origin of the commodity would have to be condemned." (R. 54.)

The culminating sentence of this analysis of the law assumes that the proposed schedules, which the Commission was asked to condemn, were for proportional rates "differing from each other according to the origin of the commodity." But the proposed elimination of the proportional rates instead of being to adjust these proportionals to the origin of the commodity, was to cancel all proportionals for ex-barge traffic—regardless of the origin of the commodity or the length and nature of the in-bound haul; to continue them for all ex-rail traffic, still regardless of the length and nature of the in-bound haul—a fact that lies on the face of the proposed schedules and was not susceptible of conflicting evidence. The Chairman of the Commission stated as to the proposed schedules:

> "It is now proposed to cancel the application of these rates to ex-barge traffic, even if it moves from such comparativeiy distant points as Kansas City and St. Louis, but to continue to apply them to ex-rail and ex-lake traffic regardless of the length and nature of the inbound haul." (R. 73.)

As he further points out:

> "After the proposed schedules take effect, the re-shipping rates will cease to apply, with very minor exceptions, on all ex-barge grain, but will continue to apply, as above indicated, on all ex-rail and ex-lake grain." (R. 70.)

The proposal in fact (contrary to assumption upon which the Commission sustained it) is not to adjust the proportional rates according to the length and nature of the inbound haul, or to the total overall length of the "through" transportation; it is to give or withhold the benefit of proportional rates going east according to whether the rails or the barge lines got the business on

the in-haul to Chicago—regardless of the length and nature of the inbound haul.

In this connection falls the further finding of the majority of the Commission:

> "To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but .06 per cent." (R. 52.)

When the inbound movement from Morris is by *rail* then the same remarks apply to the rail movement—but under the proposal, that ex-rail grain from Morris would take a proportional rate to New York, whereas the ex-barge grain *from the same point*, would have to take the higher local rate.

The same is true of every origin point; viz., under the proposal the ex-barge grain is denied a proportional rate on from Chicago, but ex-rail grain *from the same origin* would get a proportional rate.

The majority of the Commission says that "the barge-rail combinations" will be 1.75 cents higher than all-rail under the proposed schedules. (R. 53.) It is uncontradicted that the grain business of dealers on the Chicago market who sell to eastern customers is done on margins of a quarter of a cent a bushel, that is a quarter of a cent will affect a sale. (R. 1635.)

The Commission points out that under the proposal the "barge-rail combinations" to parts of Central Territory will be lower than all-rail. (R. 52.) In this connection undisputed facts in the record pointed out by Chairman Eastman are:

> "The table on page 361 of the prior report* shows clearly that the farmers are paid the Chicago market price less the 'costs incident to making delivery at

* Record 18, 246 I. C. C. 353, 361.

Chicago;' which consist mainly of the transportation charges. It follows that the farmers whose grain can be transported by barge receive the benefit, in the prices paid for their grain, of the low barge rates, and that this benefit does not go to the Chicago elevator operator. For this reason ex-barge grain has exactly the same value in the elevator as ex-rail or ex-lake grain, and naturally it will not be moved eastbound on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates.

"While it is true to some extent, that the combination of the barge rate to Chicago plus the local rate east-bound is lower than the combination of the rail rate from the same origin point to Chicago plus the reshipping rate east-bound, this fact will not enable the ex-barge grain to move from Chicago on the local rate,[1] because the benefit of the low barge rate now goes to the farmer and cannot be used by the elevator operator to offset the higher level of the local rates as compared with the reshipping rates. In other words, the grain is brought by the Chicago elevator operator and is shipped thereto without knowledge of where it will go after it reaches Chicago, and the through combination rates to eastern points do not enter into the transaction." (R. 70, 71.)

The Commission found at another point in its report:

"The proposed schedules will result in increases in the barge-rail combinations of 1.5 to 7.5 cents to central territory, and in a uniform increase of 8.5 cents to trunk line territory." (R. 52.)

Appellee, A. L. Mechling, Doing Business as A. L. Mechling Barge Line.

Appellee is in the business of bringing grain to Chicago by barge via the Illinois Waterway from points on the Mississippi River between and including New Madrid, Missouri,[2] and Burlington, Iowa, and also from points

1 The only rate allowed ex-barge grain by the proposal

2 About 70 miles below St. Louis, Missouri

located on the Illinois River and Waterway. (R. 1722.) The amounts are large, amounting to over seven million bushels in 1939. (R. 357.)

When the present rate proposal was made, Part III of the Interstate Commerce Act had not been passed; the hearing of evidence before the Commission ended on January 26, 1940. (R. 1662.) The Transportation Act of 1940 was approved on September 18, 1940.

This appellee appeared as a witness at the hearing at the instance of counsel for the Western Railroads. (R. 906, 210.) He was not a party, nor represented by counsel. (R. 906.) He had not been held to be a common carrier subject to Part III because Part III had not been enacted when the evidence was taken. (R. 1662.)

Both these provisions of the law were enacted and effective before the case came before Division 2. In a collateral proceeding appellee was held on November 6, 1941 (by Division 4 of the Commission), to be a common carrier, subject to Part III. (R. 1721.) He was therefore bound to file rates, as distinguished from the schedule of minimum charges filed by contract carriers. (Section 306.) Prior to the decision by the Commission on review of Division III, he filed his rates, a fact of which the Commission took official notice. (R. 49.) The order of Division 4 of the Commission in the collateral proceeding finding appellee to be a common carrier subject to Part III is in evidence. (R. 1721.) Appellee's right to engage in transportation was limited by the Commission to grain and soybeans. (R. 1724.) Division 4 found, as to appellee's transportation of these commodities:

> "After reaching destination the commodities generally continue movement by rail or water carriers to points in other states or to foreign countries." (R. 1722.)

The division further found:

> "Applicant furnished transportation by barge, and

we will limit his service to that type of operation." (R. 1723.)

After appellee had been found to be a "common carrier subject to Part III" (Section 3(4)) he asked leave to intervene before the Commission and present evidence in support of his contention that the rate proposal, if allowed to become effective, would be in derogation of his rights as a common carrier subject to Part III, under Section 3(4) and the new National Transportation Policy, and his constitutional right to a hearing on those new issues before they were decided. (R. 95-100; original record, 172 *et seq.*) The Commission denied his application. (R. 1724.)[1]

The Commission never took any evidence addressed to the issue under Section 3(4) as amended, or the National Transportation Policy. The record before the examiner on the facts was closed before those provisions became effective (R. 1662) and never reopened.

1. Counsel for the Commission is in error in stating that prior to the report of Division 2, Federal Barge Line was the only common carrier bringing grain to Chicago by barge and that the rest were contract carriers. (Br. p. 54.) The finding that Mechling was a common carrier subject to Part III was made on November 6, 1941. (R. 1721.) However, it was predicated on a finding under the "grandfather" clause of Section 309 that Mechling was a common carrier on January 1, 1940. (R. 1722.) The report of Division 2 is dated July 31, 1941. Counsel for the Commission are in error also in stating that the Transportation Act of 1940 became effective after the report of Division 2. (Br. p. 54.) John I. Hay Co. (R. 18, 246 I. C. C. 353, 357) has recently been held to have been a common carrier on January 1, 1940.

SUMMARY OF ARGUMENT.

The rate proposal was in violation of Section 3(4) as amended.

The Commission, in defending its order under Section 3(4) on brief here, ignores the discrimination in favor of incoming railroads against incoming barge lines. It depends on an early case in this Court decided before the recent amendments of Sections 3(1) and 3(4), which does not support the argument it makes.

Eastern railroad appellants defend the order under Section 3(4) on the proposition that a connecting carrier is not such unless there is a "through route". Before the recent amendment of Section 3(4) that view had been taken in some cases before the commission. The amendment of Section 3(4) changes that.

Section 3(4) forbids any rate discrimination between connecting lines, and, by the recent amendment, defines "connecting lines." This definition includes appellee barge lines.

The Commission considered, as warranting its order under Section 3(4), matters which do not warrant it and which it had no right so to consider, matters which afford no rational basis for the order, under Section 3(4) as amended.

The order violates Section 2 of the Interstate Commerce Act.

The "unjust" discrimination forbidden by Section 2, there defined as arising from different charges for transportation rendered under "substantially similar circumstances and conditions," exists here. The discrimination in the rate for the transportation east from Chicago is

made against grain that has come in by barge and in favor of grain that has come in by rail, although it all came from the same origin. As to origin, the transportation east from Chicago is under identical conditions, with respect to grain subjected to the discriminatory treatment. There are no findings of any dissimilarities in circumstances and conditions in the rendering of the transportation service east from Chicago that warrant the discrimination against grain that has come in by barge, in favor of grain that has come in by rail. The commission, in sustaining the proposal under Section 2 relied on matters that it was not entitled to consider as a matter of law.

Reasonableness of a rate is not the test of its discriminatory character under Section 2 or 3; though a rate may be both unreasonable and discriminatory, as the proposed rates are.

The order is in violation of the National Transportation Policy.

The basis on which the Commission primarily supported the proposal was that the benefit of a lower water rate into Chicago can be set off against an increased rail going on east from Chicago. This sacrifices the inherent advantage to the public of low cost water transportation, with no finding to warrant that. No evidence addressed to the National Transportation Policy was heard. Such evidence, being offered, was rejected.

The Commission, in order to do its duty, should have disposed of the case under Section 6(11)b, and applied Section 15(7).

The District Court had jurisdiction to enjoin the order. The objections to it are held by this Court to be within the scope of judicial review, both as a matter of statutory construction and as a matter of constitutional principle.

ARGUMENT.

I.

The Rate Proposal Was in Violation of Section 3(4) of the Interstate Commerce Act as Amended.

Section 3(4) of the Act reads:

> "(4) All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to Part III." (As amended September 18, 1940—49 U. S. C. A. 3 (4) (Supplement.)

The prejudicial difference in treatment to which the ex-barge grain would be subjected by the proposal is not disputed by any appellant.

The Western line appellants make no attempt to justify the proposal under Section 3(4).

The brief for the Commission:

(a) Ignores the discrimination in favor of the ex-rail traffic (brief 52). As we have pointed out, ex-rail grain will be eligible for a proportional rate for the on-haul from Chicago; but ex-barge grain, though it came in from the same origin point, would be subjected to a higher rate for the on-haul.

(b) The Commission's brief says: "Prior to the

> Transportation Act of 1920, this court held that discrimination between connecting railroads forbidden by Section 3(4) of the Act to Regulate Commerce is a question of administrative fact and is of the same quality as discrimination and undue prejudice against persons and localities," citing *Pennsylvania Co. v. United States*, 236 U. S. 351, 361 (Brief 52, 53).

The case referred to was one in which this Court, affirming the District Court, refused to enjoin an order of the Commission; the Commission's order was one which compelled the Pennsylvania Railroad to give a connecting railroad switching facilities, that it was giving to other connecting railroads. That decision was correct; obviously it does not support the proposition for which the commission cites it.

The first paragraph of Section 3 of the earlier Act, under which that case was decided read, as quoted in that opinion:

> "That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." (Idem.)

In the course of the opinion, this Court, commenting on Section 3 of that Act, said:

> "This section forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation, or locality; what is *such undue preference or advantage* is a question not of law but of fact." (Idem.) (Our emphasis.)

When the present case was decided Section 3(1) of the Interstate Commerce Act, as amended, read similarly, ex-

cept that Congress had added this sentence by the Transportation Act of 1940:

> "Provided, however, that *this paragraph* shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description." (Our emphasis.) (Section 3(1), 49 U. S. C. A. 3(1).)

It is not upon Section 3(1) that we rely. This Court in the cited case paraphrased provisions of the first paragraph of the earlier act in saying that they presented questions of fact and not of law. And Congress later amended that language of that paragraph to say that the provisions of that paragraph did not apply to discrimination against the traffic of any other carrier. This was done as part of the general revision of the Interstate Commerce Act effected by The Transportation Act of 1940. At the same time Congress put Section 3(4) in the form in which we rely upon it; Section 3(4) as amended and not Section 3(1) applies here.

The provisions of other paragraphs of the earlier act (quoted in the opinion) dealing with inte -carrier discrimination as to rates, fares and charges, were not even involved in the cited case. The court said:

> "And, as we have said, the question of compensation is not here involved, and what compensation the Pennsylvania Company might require from the Rochester Company is not now to be determined." (Idem.)

—This Court's refusal in that case to pass on the Pennsylvania Company's contention that its mutual switching arrangements with other connecting lines would warrant a difference in charges, is not a decision that it did warrant such a difference. It is far from a decision that interline discrimination in rates, fares and charges never presents a question of law. It is not a decision that a discrimination in rates between connecting lines, whose admitted purpose is to drive the traffic off one and onto the other, does not

present a question of law. (R. 266.) It is especially not a decision that discrimination between carriers bringing the same commodity from the same point to the same reshipping point, and made to depend solely upon the circumstance that one is a common carrier by water, the other by rail, never presents a question of law. If the intent of the legislation is to permit that, then the intent of the legislation is to permit the rails to dictate who shall serve the public in the transportation of grain to Chicago. That is exactly what the witness for the rail proponents of their rate change said they meant to accomplish by their present rate proposal. (R. 266.) It is not disputed by any appellant that to a large extent at least, it will successfully accomplish it, the only finding of the commission and the only contention of its counsel being that it will not wholly *prohibit* the barges rail movement.[1]

It is difficult to find any meaning for Section 3(4) as amended, unless it was meant to lay down a rule of law, forbidding discrimination as to rates, fares and charges between connecting carriers. The commission did not find as a fact that there was no such discrimination. On the contrary, Division 2 held, as a matter of law, that

> "Under the Interstate Commerce Act as amended September 19, 1940, Section 3(1) of part one undue discrimination, prejudice or disadvantage by rail carriers to the traffic of any other carrier, by water for example, is not unlawful. Part III of the Act is substantially similar. *It follows* that the prejudice alleged by the barge line, even if it existed, is not unlawful." (Our emphasis.) (R. 18; 246 I. C. C. 353 at 356.)

It went on to say that the low barge rates had induced

1. Unlike Section 3(1), Section 3(4) makes no qualification as to what is "unjust", "undue", or "unreasonable", as to rate discrimination between connecting carriers. Rate discrimination between connecting carriers is unqualifiedly forbidden. Whether or not questions of what is "unjust", "undue", or "unreasonable", were questions of fact, no such questions arise under Section 3(4) as amended. If, as the argument for the Commission above quoted would suggest, the Commission treated the case as though such questions were decisive, it would amount to a further departure from the statute.

the rails to yield to the temptation of publishing low intrastate rates into Chicago, characterizing this as a breakdown of the interstate (rail) rate structure, and suggesting no way in which the rate proposal in question would remove that temptation from the rails. The way in which the rails said it was intended to work was to "drive this traffic off the water and back onto the rails."

The full commission made no finding supporting any conclusion that there was no discrimination. It did not find a breaking down the grain rate structure (and the finding of Division 2 on that point is to be deemed withdrawn). *Akron, C. & Y. Ry. Co. v. U. S.*, 261 U. S. 184, 203.

Its finding that the barge-rail movement would not be "prohibited" is not a finding that it was not injured and discriminated against. Its finding that ex-barge grain would be treated no worse than local grain or grain that had lost its transit privilege, or grain that came in on intrastate rates do not tend to show that there was no discrimination; it *was* treated worse than ex-rail grain of identical character from the same origins. Its finding that ex-barge grain would be treated no worse than ex-truck grain does not tend to show there was no discrimination against ex-barge grain in favor of the connecting rail carriers, and ignores the statute which does not forbid the rails to discriminate against ex-truck grain but does forbid them to discriminate against traffic of common carriers by water subject to Part III (Sec. 3(4)). Its finding predicated on "barge-rail combinations" is not a finding that there is no discrimination but the contrary; on no theory of the facts advanced by the Commission is the ex-barge grain on an equality with ex-rail grain for movement to Eastern Trunk Line and New England territory.

The commission's result is not supported by any finding of fact. It is rested upon a proposition of law:

"To adopt protestants' premise would mean that all

> proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned." (R. 54.)

We do not find that appellants attempt to defend that proposition. We submit, it cannot be defended. There is no conflict in the record that this rate proposal was to cancel the existing proportional rates on ex-barge grain *whatever its origin*—continuing proportional rates on ex-rail grain, *whatever its origin*. Grain from the same origin would take the lower proportional, or not, depending solely on whether it came in by rail or by barge.

Turning to the argument made for the eastern rail appellants, their contention under Section 3(4), as amended, is that the barge carriers were not "connecting carriers," because there was no "through route." (Brief 55, *et seq.*) They cite no authority for this proposition. They concede that physical connection is unnecessary. (Brief 54.)

In the next preceding section of their argument but one they refer to *St. L. S. W. Ry. Co.* v. *U. S.*, 245 U. S. 136, for a definition of what is a through route.

Prior to the amendment of the Interstate Commerce Act (which *inter alia* enacted Part III and amended Section 3(4)) one group of carriers subject to the Commission's regulation were those "engaged in":

> "(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common contract, management, or arrangement for a continuous carriage or shipment;" etc. (41 Stat. 474; 49 U. S. C. A. 1.)

The Commission had held that the later provisions of Section 3(4) as they then stood forbidding interline discrimination, applied only to protect carriers subject to its jurisdiction. Division 2 refers to such decisions of the Commission (R. 18, 246 I. C. C. 353, 363) and then proceeds to say that discrimination against traffic of carriers by water is not unlawful under Section 3(1) of the Interstate

Commerce Act as amended in 1940 and that "it follows" that the prejudice alleged by the barge line is not unlawful; it then says immediately thereafter that:

> "This barge line has no common arrangement with respondents for a through route," etc. (R. 18; 246 I. C. C. 353, 363.)

Division 2 concludes, as quoted by the eastern rail appellants (Brief 57):

> "To now conclude that the suspended schedules should be found not justified would, in effect, be recognizing a common arrangement between the barge lines and the rail carriers for a continuous through route, despite the fact that the evidence definitely shows that none exists. A common arrangement cannot be inferred." (R. 18; 246 I. C. C. 353, 380.)

All this ignores the amendment of Section 3(4) effected by the Transportation Act of 1940. That amendment, after forbidding discrimination in rates between connecting lines, then defined connecting lines by a new sentence, as follows:

> "As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions *of this chapter or any common carrier by water subject to Part III.*" (Our emphasis.) (49 U. S. C. A. 3 supplement; 49 Stat. 607c, 722, Title I, Sec. 5(a). The Code transliterates "Part III" into "Section 12 of this Title," which is Part III of the Statute as enacted. Idem.)

This appellee (R. 1722, 1723; Sec. 309) and Inland Waterways Corporation are common carriers subject to Part III. There is no contrary contention.

Among other things, it would appear from the foregoing that the amendment of Section 3(4)* was aimed at the doctrine of the Commission excluding water-carriers from protection against inter-line discrimination.

* Which the Division and appellants ignore although they rely on the amendment of Section 3(1) effected by the same act, excluding the application of that other paragraph to interline discrimination.

The statutory definition of connecting line is explicit; and now includes not only common carriers subject to Part I—it also includes "any common carrier by water subject to Part III." This provision is new. If it meant that there must also be a through route (as the Commission formerly required) no effect whatever is given to the amendment. That is not defensible. It will be noted that learned counsel for the Commission does not join the eastern railroads in this position.

Summarizing: We contend: That under Section 3(4) the question is not whether there is an "unjust discrimination" but whether there is a "discrimination." The Commission undertook to justify the discrimination. This, we think, was its first error of law. No intercarrier rate discrimination (Section 3(4) as amended) can be "just" or "reasonable." All intercarrier rate discrimination is forbidden.

Assuming we are wrong in this, and that the Commission had power to look for facts that in its opinion would justify interline rate discrimination—notwithstanding Congress had forbidden interline rate discrimination—we also and equally contend that the facts found by the Commission do not justify the discrimination. For example, the injury to the barge-rail movement is not denied. The undisputed evidence precludes denial.* The avowed purpose of the rate proposal was to transform the barge-rail movement into an all-rail movement. (R. 266.)

It is familiar (and not denied) that failure by the Commission to find facts supporting its conclusion constitutes an error of law

Florida v. *U. S.*, 282 U. S. 194, 215.

U. S. v. *B. & O. R. Co.*, 293 U. S. 454, 464.

U. S. v. *Chicago, M. & St. P. R. Co.*, 294 U. S. 499.

* The record is summarized in the brief for Inland Waterways Corporation, *et al.*, Appendix B, pp. 117, *et seq.*

The extensive findings of matters that did not justify the discrimination show that the Commission treated, as justifying the discrimination, matters that do not do so. It is familiar (and not denied) that for the Commission to take account of matters that cannot lawfully influence its judgment is an error of law.

Mitchell v. *U. S.*, 313 U. S. 80.

Interstate Commerce Commission v. *Diffenbaugh*, 222 U. S. 242.

Interstate Commerce Commission v. *Stickney*, 215 U. S. 98.

Ann Arbor R. Co. v. *U. S.*, 281 U. S. 658, 666.

Anchor Coal Co. v. *U. S.*, 25 F. (2d) 462, 471.

Examples of this are, treatment of this case as though it were a proposal to adjust proportional rates to the length and nature of the inbound haul, whereas it is a proposal to abolish them for all ex-barge traffic, regardless of the length of the inbound haul; the Commission's observations as to local, truck and intrastate grain and grain that has lost its transit privileges.

In these connections we refer to two other matters considered by the Commission, which we submit neither justify the discrimination nor constitute matters the Commission had any right to consider in that connection.

First, the Commission says that the existing proportionals violate Section 4. The answer to this is well made in the brief for Inland Waterways, *et al.*, and we do not reproduce the discussion of that brief here merely to avoid repetition. We do wish to add however that we further contend that assuming (not conceding) a violation of Section 4 in the established proportional rates which were not in issue, that does not justify discrimination in a new rate proposal. To so hold would be to hold that Section 4 cannot be obeyed without treading on Section 3(4).

Second, the argument of some of the appellants is ex-

tensive that the Commission did not violate Section 2 in taking into account antecedent transportation conditions prior to the arrival at the rate break point. That argument is advanced in defending the Commission against the charge of having violated Section 2 (not Section 3(4)), and will be considered in that connection.

We also submit that there is no evidence fairly supporting even the insufficient finding that the barge-rail movement would not be prohibited. This rate proposal was made with intent to drive the inbound traffic off the water. The record is detailed in Appendix B of the brief for the Inland Waterways Corporation.

The only answer of any appellant that we find are (1) that a witness said that the continuance of the barge-rail movement would depend on supply and demand; (2) to some central territory destinations "barge-rail combinations" would still be lower than all-rail.

In rejoinder: (1) the statement of a witness that the barge-rail movement would depend on supply and demand does not get to the conclusion argued from it. That is a generalization; the precise question is whether there would be a demand. The evidence is overwhelming and uncontradicted that there would not be. (Cf. Appendix B of Brief for Inland Waterways Corporation.) (2) The fact that the "barge-rail combination" would still be lower to some central territory destinations equally falls short of the appellants' desired conclusion, when the facts stated by Chairman Eastman and not disputed are taken into account. (R. 70, 71.) It is evident therefrom, as he states, that the "barge-rail combinations" theory "will not enable the ex-barge grain to move from Chicago at the local rate." (R. 70.) The farmer gets the benefit of the low inbound barge rate (R. 18; 246 I. C. C. 353, 361); it is the buyer on the Chicago market who must reckon with the higher local rate for the on-haul (R. 71, said Appendix B).

The record discloses no shipper who can offset a low inbound rate against a higher outbound rate.

Taking all the facts into consideration, the circumstances relied on by appellants do not rationally support the conclusion that the proposals would not actually prohibit the barge-rail movement.

Rochester Tel. Corp. v. U. S., 307 U. S. 125, 146.

The Rate Proposal in Question Violated Section 2 of the Interstate Commerce Act.

The western railroads make no defense of the Commission's order in this connection.

Section 2 forbids "unjust discrimination," and defines what that means. The contention of appellants is that the rates for the on-haul could be higher on ex-barge grain, because a difference in antecedent transportation conditions created a situation in which the on-service was not "under substantially similar circumstances and conditions," which is the essential language pointed to by appellants in the definition of "unjust discrimination" prohibited by Section 2.

In the first place, the antecedent condition chiefly stressed by the Commission with reference to the inbound haul was the length of the inbound haul. We have heretofore pointed out that when the inbound haul is to be from the same origin, the discrimination is nevertheless made against ex-barge grain in favor of other grain in the rate for the on-haul. It is impossible on the undisputed facts to justify the discrimination by that "antecedent transportation condition." The rate will be different when that antecedent condition is identical.

While the Commission did not say that when the inbound haul is over a low-cost water route that would constitute an antecedent transportation condition such that the on-haul

would not be under substantially similar circumstances and conditions, the appellants argue the case as though it had said that.

If that were an essential finding, the Commission did not make it, and the order errs in point of law for the failure to make it. (Cas. cit.)

But if the Commission had made it, as appellants wish to assume, it would constitute matter that the Commission was lawfully entitled to consider as justification of the discrimination; it would not justify the discrimination.

The Commission itself has been particularly clear on this. In *Chattanooga Packet Co.* v. *I. C. R. R. Co.* (1915) 33 I. C. C. 384, (by the entire Commission) the defendant rail line restricting its proportional rates against ex-water traffic was dealt with as follows (p. 392):

> "The fact that the proportional rates to and from the Ohio River are compelled by competition can have no bearing upon our determination of the issue of unjust discrimination. The 'like circumstances and conditions' referred to in Section 2 of the act are those which arise within the field of haulage, and do not include competition. *Wight* v. *U. S.*, 167 U. S. 512; *I. C. C* v. *A. M. R. R. Co.*, 168 U. S. 144. The shippers who desire to avail themselves of the water-and-rail route must be given equal treatment with those who ship all-rail. Any discrimination which exists must not exceed that which is warranted by the differences in circumstances and conditions *of the haul over defendant's lines.*

Further (p. 393):

> "We are of the opinion and find that, by restricting their proportional rates to traffic routed over their southern rail connections, defendants are unjustly discriminating against complainant and against shippers who desire to route their goods over complainant's boat line."

See *accord*:

Raw Sugar, New Orleans to Gramercy and Reserve La. (1935) 206 I. C. C. 231.

Bascom Co. v. *A. T. & S. F. Ry. Co.*, 17 I. C. C. 354.

Rosenbaum Bros. v. *L. & N. R. R. Co.*, 22 I. C. C. 62.

Birkett Mills v. *D. L. & W. R. R. Co.*, 123 I. C. C. 63.

Ex-River Grain and Products to Mississippi Valley, 177 I. C. C. 206.

Restriction of Proportional Rates, 161 I. C. C. 113.

The same principle has been announced by this court in many cases.

The decision of this court cited by the Commission in the opinion above quoted is *Wight* v. *U. S.*, 167 U. S. 512, 518. Other cases are *I. C. C.* v. *Delaware L. & W. R. Co.*, 220 U. S. 235, 253-4 (where the court stated the principle in much broader terms than necessary to condemn the present rate proposal); *Atchison, Topeka & Santa Fe Ry. Co.* v. *U. S.*, 279 U. S. 768. Cf. *T. & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197

Appellants confuse this principle by the suggestion that it is inconsistent with the existence of proportional rates. But to maintain proportional rates lower than local rates on the principle that the commodity to which the proportional rates apply has had a prior movement to the reshipping point, is perfectly consistent with a principal that forbids withholding proportional rates entirely from commodities that have had an inbound haul over one type of carrier, while they are given to those whose inbound haul was by a favored type of carrier.

Appellants likewise confuse this situation by arguing that the rates were reasonable and that therefore it was proper to require ex-barge traffic to pay them. If the ex-rail and

ex-lake traffic were also required to pay the local rates, the situation would be different. The answer to the question whether a rate is reasonable (under Section 1) does not control the answer to the questions whether it is discriminatory, (Sec. 3(4)) or unjustly discriminatory (Sec. 2).

> *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 145 U. S. 263, 277.
>
> *American Express Co.* v. *So. Dakota ex rel. etc.*, 244 U. S. 617, 624.
>
> *U. S.* v. *I. C. R. R. Co.*, 263 U. S. 515, 524.

A rate may be at once unreasonable under Section 1 and discriminatory under Section 2. We think this rate proposal was subject to both criticisms. But that is not always true, and the tests are not the same.

> "Moreover, to make an additional charge for having brought merchandise into a city, if it should afterwards be shipped out, is on its face unreasonable. And it is discriminatory to make that additional charge only if the outbound shipment is over one of several railroads."
>
> *Atchison T. & S. F. Ry. Co.* v. *U. S.*, 279 U. S. 768, 773.

In the same case this court said further:

> "When the outbound shipment from Kansas City is made the grain goes forward on a new bill of lading. Obviously, this practice cannot convert the independent shipment of grain from Kansas City to the gulf via the Southern into a through movement from Dodge City to the gulf." (*Idem*, 779.)

The Rate Proposal in Question Was in Violation of the National Transportation Policy.

A new National Transportation Policy was enacted by the Transportation Act of 1940.*

It directs the Commission, in mandatory language to administer all sections of the act so as to accomplish the purposes there stated.

One such purpose is to preserve the inherent advantages of the various forms of transportation, including water transportation. The great and obvious inherent advantage of water transportation is low cost. So to administer the act as to destroy or diminish water transportation in this trade on account of its low cost, is not to administer the provisions of Section 2 and 3(4) as to preserve that inherent advantage.

The policy of Congress is to foster water transportation on account of its low cost. That advantage is now being realized by producers of grain to whom water transportation is available. (R. 18, 246 I. C. C. 353, 361-362.) Large sums of public money have been invested in developing water transportation in order to achieve that result. After Congress has made that investment in order to secure the inherent advantage of water transportation, and directed its Commission in mandatory language so to administer the Interstate Commerce Act as to preserve it, at the same time amending the act so as to protect common carriers by water against interline rail rate discrimination, then the Commission does not obey the statute when it approves a rate proposal which is designed and will operate to diminish water transportation, on the theory that for such water-rail movement as survives, the low cost of the inbound barge rate partly offsets the increased outbound rail rate on the traffic.

* Preceding Section 1

This is true even though the water transportation were not diminished at all, and even though the shippers of grain in this trade could offset a higher outbound rail rate against a lower rail rate. For the cost of getting the grain from country origin through the reshipping market and on to eastern destination would be increased. That increase represents so much sacrifice of the economy of water transportation on the inbound haul. It is to cancel the economic advantage of low cost water transportation into Chicago by increasing the cost of rail transportation out of Chicago. That is an economic waste; it is *pro tanto* throwing away the national resource of cheap water transport.

> "The proposed schedules will result in increase in the barge-rail combinations of 1.5 to 7.5 cents to central territory, and in a uniform increase of 8.5 cents to trunk line territory." (Report of the Commission, R. 52.)

This is a palpable sacrifice of the inherent advantage of water transportation. In view of the mandatory requirement that the Commission shall so administer the act as to preserve the inherent advantages of the various forms of transportation, it was squarely contrary to the mandate of congress, unless it appears from some other finding of the Commission that this sacrifice of one purpose of the Act was reasonably required in order to achieve some other purpose of the Act that was more urgent or more seriously involved. There is no such finding; it does not appear from any word of their report that the majority of the Commission ever addressed itself to that inquiry.

It appears, on the contrary, that the taking of evidence was completed in January, 1940, before the National Transportation Policy had been enacted by Congress (in September, 1940). Even had the Commission made findings of fact sustaining the rate proposal under the policy of Congress they would not be a proper exercise of administrative

discretion, for they would be based on evidence that was not addressed to the National Transportation Policy and could not have been so directed, for it was evidence taken before that policy was enacted. This appellee (specially appearing, inasmuch as he could not submit to the record so made before issues to which he asked to present evidence existed) asked the Commission for leave to present evidence addressed to the new National Transportation Policy and the Commission refused to receive such evidence. (R. 1724, 1725; 95-100; original record 172.) Counsel for the Commission and the other appellants now argue to this Court that the National Transportation Policy was effected (and Section 3 (4) respected.) It is true that the order necessarily involved a determination of those questions. It is also true that it was entered without taking evidence addressed to those issues. (Findings 31, 32; R. 1675.) There is palpable legal error when an administrative agency acts without taking evidence addressed to the statutory standards which Congress has established for its action.

This is especially pertinent when, as here, the action of the Commission is defended on assertions of the latitude of administrative discretion. Even if we were to assume (contrary to what we submit to be the fact) that the evidence taken warranted the order under the new National Transportation Policy, no one can say that that record would have been the same if it had been made with reference to the then unenacted National Transportation Policy. No one can say that the evidence this appellee sought to introduce would not have been at least entitled to administrative consideration under that policy. Administrative discretion is not extended to permit the administrators of Congressional policy to act upon a record that was made without reference to that policy, and to decline to hear and consider the evidence that is addressed to that policy.

The policy which the Commission in its brief here ad-

vances as derived from the Act of Congress and as warranting the order made is the policy to foster competition between carriers. Obvious facts overlooked by this contention are that this proposal was designed to destroy water competition; that the inbound water carriers who would be hurt are not in competition on the movement east from Chicago to which alone the rate proposal applied; and that (whether the rail movement east from Chicago or the whole movement from country origin to destination is regarded) the effect of this "competitive" proposal is not to lower rates to the public but to increase them—whereas such policy as may be found to foster competition, contemplates competition calculated to improve, not injure, the situation of the shipping public. The National Transportation policy inhibits "destructive competitive practices." If the Commission indeed acted on the theory it argues here as to a policy to foster competition, including this "competitive" practice that will increase the cost of transportation, it manifestly misapplied the law. The finding of fact is that this "competitive" practice here involved (if it is properly called such) will increase the cost of transportation to the public; the theory on which the Commission discusses the increase in the rail rate east from Chicago involves canceling *pro tanto* the advantage of the low cost water haul into Chicago by an increase in the rail rate for the on-haul.

IV.

The Commission Committed an Error of Law in Failing to Dispose of the Case Under Section 6(11)b and in Failing to Hold the Eastern Railroad Appellants to the Burden of Proof Imposed on Them by Section 15(7) of the Act.

The position of this appellee is identical on this point with that of Inland Waterways Corporation, and to save repetition reference is made to the brief for that appellee, pages 81 and following.

V.

The District Court Had Jurisdiction to Enjoin the Order.

It will have appeared from what has been said that objections to the Commission's order were of a sort that this court has repeatedly held to be within the scope of judicial review.

Since our position is similar to that of Inland Waterways Corporation on this point we refer to and rely on the argument made in the brief for that appellee, without repeating it. (Brief 34 and following.)

We wish to add these considerations:

Western rail lines (not the Commission, nor the eastern rail proponents of the rate change in question) contend that appellees were bound to submit to the Commission's order until they could carry through a complaint proceeding. Without repeating the decisive reply to that contention in the brief for Inland Waterways Corporation, we point out that the practical consequences of that suggestion to this appellee would be especially disastrous, since the barge grain trade is the only transportation in which the Commission has permitted him to engage under the Transportation Act of 1940. (R. 1724.) It is but reasonable to suppose that in enacting Section 15(7), under which the Commission held its hearing and entered the order complained of, it was intended to protect all affected parties against the consequences of applying increased rail rates while complaint proceedings were carried on. Those consequences would be especially severe to this appellee, since the only transportation permitted him is barge transportation, and the grain he transports goes generally to interstate and foreign destinations. (R. 1722.)

We also suggest that "administrative discretion" upon which appellants so heavily rely, does not mean discretion

in the administrator to make the standard for his own action; that it does not include discretion to act except under and in conformity with the standard or rule prescribed by Congress; that it is not validly exercised without findings of fact that disclose that it acted upon the statutory policy, based on a fair hearing, which includes reception and consideration of evidence that is addressed to the standard, and opportunity to know what that standard is when the evidence is offered. These propositions rest also on familiar propositions of constitutional government.

Atchison, Topeka & Santa Fe Ry. Co. v. *U. S.*, 284 U. S. 248, 262.

Mahler v. *Eby*, 264 U. S. 32, 44.

Wichita Railroad & Light Co. v. *Public Utilities Commission*, 260 U. S. 48, 59.

Florida v. *U. S.*, 282 U. S. 194, 215.

In the *Atchison* case, 284 U. S. 248, *supra*, this court held that a change in the economic level after the evidence was taken required the Commission to take further evidence, saying (p. 262):

> "In the discharge of its duty, a fair hearing is a fundamental requirement."

I. C. C. v. *Louisville & N. R. R. Co.*, 227 U. S. 88, was cited (that case holds that the Commission cannot reach decisions on its own knowledge, but can act only on evidence). An order of the District Court declining to enjoin the enforcement of the Commission's order was reversed.

It would seem that a change in the economic level is no more potent a reason for further hearing than a complete overhauling of the statutory situation as to the regulation of carriers by water, which included an amendment of the

provisions of the act relied on and a new National Transportation Policy, and a new statutory status for appellee.[1]

The absence of findings of fact that would sustain this rate proposal under the National Transportation Policy and Section 3(4); the presence of findings that would condemn it thereunder, and extensive discussion of matters that the Commission had no right to consider as sustaining it thereunder; the failure to take any evidence addressed to that policy or to Section 3(4); the refusal to hear the evidence that was addressed to that policy and to Section 3(4); and the acceptance of evidence taken before those enactments and without reference thereto, when no one knew that those were issues, as a basis for an order thereunder—all seem to force appellants to carry administrative discretion into new and hitherto forbidden territory. They also refute the suggestion of the eastern railways that no constitutional questions are raised: they are raised. (R. 93, 94.) If the act is construed to warrant what the Commission did here, then the act delegates legislative power and appellee was denied the fair hearing essential to due process of law.

Conclusion.

The order of the specially constituted District Court should be sustained.

Respectfully submitted,

LUTHER M. WALTER,
EDWARD B. HAYES,
For A. L. Mechling, doing business as A. L. Mechling Barge Line, Appellee.

EDWARD B. HAYES,
Of Counsel.

1. Appellant's new status as a regulated common carrier subject to Part III made a difference, both with respect to the application to him of Section 3(4) (cf. the last sentence thereof) and seems to have been a matter that commissioners would consider under Section 4 and Section 6(11)b. Cf. Headnote of the majority report of Division 2 (R. 18, 246 I. C. C. 353) and dissent of Commissioner Alldredge. (R. 381.)

of. 5, 9, 10

SUPREME COURT OF THE UNITED STATES.

No. 175.—October Term, 1942.

The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, et al., Appellants, *vs.* Inland Waterways Corporation, et al. } On Appeal from the District Court of the United States for the Northern District of Illinois.

[June 14, 1943.]

Mr. Justice Jackson delivered the opinion of the Court.

By schedules filed with the Interstate Commerce Commission to become effective October 15, 1939, the appellant eastern railroads[1] sought to deny grain arriving at Chicago by barge over the Illinois Waterways the privilege of moving out of Chicago by rail on "proportional" rates applicable to competing grain arriving at Chicago by lake steamer or rail. The only other rates on which the ex-barge grain could move eastward by rail from Chicago were "local" rates, which were in all cases higher than the existing "proportional" rates. The proposed schedules were protested by barge lines and others desirous of maintaining the existing proportionals as to ex-barge grain.

Understanding of the controversy thus precipitated and the consequent litigation which has brought it to this Court requires a statement of the rather complicated rate structure to which the proposed schedules related.

The proposed schedules applied to grain, grain products and grain by-products, but for convenience we refer to them all as "grain." They dealt not only with grain coming by barge *via* the Illinois Waterways to Chicago, but also with grain so arriving at Peoria, Illinois, St. Louis, Missouri, and other related rate-break points. Chicago is illustrative of all, and for convenience we shall follow the practice employed by the parties in briefs and argument, and confine our discussion to it.

[1] Baltimore & Ohio Railroad Company, New York Central Railroad Company, New York, Chicago and St. Louis Railroad Company, Pennsylvania Railroad Company, Erie Railroad Company, and the Chesapeake & Ohio Railway Company.

Grain originating at Chicago, grain brought there by truck, or by rail under intrastate rates, and grain which had forfeited its transit privileges, moved eastward by rail from Chicago on local rates. Their validity as such has not been questioned in this case.

Grain originating at certain places distant from Chicago had the privilege, however, of moving eastward from Chicago by rail on the lower proportional rates, although it came to rest at Chicago for marketing or processing. These "proportionals" varied according to the region of origin or the region of destination; and, in some instances, according to both.

"Official Territory" lies east of Chicago, and is divided into "Central Territory," "Trunk-line Territory," and "New England Territory." Central Territory lies west of a line drawn through Pittsburgh and Buffalo. To this territory there were three different sets of proportionals, set with reference to the territory of origin.

Grain originating at certain points in Illinois moved out of Chicago by rail to Central Territory on "Illinois Re-Shipping" proportionals, which, however, did not apply to ex-barge grain and were not affected by the proposed schedules.

Grain originating in "Northwest Territory" moved out of Chicago by rail to Central Territory on "Northwest" proportionals, which were in some instances higher, and in others lower, than the Illinois Re-Shipping proportionals. As first published, these proportionals applied only to grain originating in Northwest Territory, which comprises generally North Dakota, South Dakota, Minnesota, Wisconsin, the upper peninsula of Michigan, Montana, Wyoming, Idaho, Oregon, Washington, and certain Canadian provinces. The Northwest proportionals were originally and have continued to be applicable on grain arriving at Chicago by lake. In 1932 the Northwest proportionals were amended to make them apply to shipments which "arrived by boat line at Chicago . . ." At the time this wording was put into the tariffs the only waterborne grain to which they applied was that arriving from the Northwest by boat over the Great Lakes. The Commission has decided that the effect of this amendment was to make the Northwest proportionals apply to grain arriving by barge over the Illinois Waterways, which were opened in the following year, 1933; and we accept its determination of this issue. While shipping points along the Waterways vary from 57.5 to 209.9 miles in dis-

tance from Chicago, some grain arriving there by barge originated at points as far beyond as Kansas City and St. Louis. The Northwest proportionals were the only ones which applied to ex-barge grain moving out of Chicago by rail to Central Territory, and the proposed schedules cancelled them as to such grain.

Grain brought by rail from "Trans-Mississippi Territory," which included, among other places, Kansas City and St. Louis, moved out of Chicago to Central Territory on "Trans-Mississippi" proportionals, which had been set by the Commission 3 cents lower than the Northwest proportionals, in order to equalize the Twin Cities with Kansas City. The Trans-Mississippi proportionals did not apply to grain coming from these points by barge, and therefore such grain had to pay a higher rate for the outbound haul than was required of grain coming from them by rail. No complaint has been made, however, of this; and the appellees have been content to assert that they are entitled to the Northwest proportionals as to such grain.

"Trunk-line Territory" lies between Central Territory and New England Territory, which comprises the New England States. To Trunk-Line and New England Territories the proportionals did not vary with the point of origin of the grain. These proportionals applied to grain coming to Chicago by barge over the Illinois Waterways, and the proposed schedules cancelled them as to such grain. The existing schedules provided that "in no case shall the combination through rate to and from the re-shipping point *via* rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom." No such provision was made with respect to the barge-rail traffic, and the Commission found accordingly that "the barge-rail rates are far below the local rates from the re-shipping points in contravention of the fourth-section rule,[2] while the all-rail rates are in strict conformity with that rule."

When the proposed schedules were filed with the Commission, that body, acting pursuant to its authority under § 15(7) of the

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2 § 4. "(1) It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall

Act,[3] suspended them for the allowable period of seven months and entered upon a hearing of their lawfulness. The last testimony was heard, and the record in the case closed, on January 26, 1940. On September 18, 1940, the President approved the

not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section, but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *And provided further*, That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice." 54 Stat. 904, 49 U. S. C. § 4 (1).

[3] 44 Stat. 1447 as amended by 54 Stat. 912, 49 U. S. C. § 15(7), reading:

"Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or change for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

Transportation Act of 1940.[4] Thereafter the appellee Inland Waterways Corporation requested the Commission to dispose of the proceeding in the light of the new Act. On July 31, 1941, Division 2 of the Commission found that "the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," and that "the schedules under suspension are not shown to be unlawful." It announced that an order would be entered vacating the already expired order of

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[4] The provisions of the Interstate Commerce Act particularly relied upon by appellees which were amended or added by the Transportation Act of 1940 read as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." 54 Stat. 899.

"§ 3(1). It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description." 54 Stat. 902, 49 U. S. C. § 3(1).

"§ 3(4). All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III." 54 Stat. 903, 49 U. S. C. § 3(4).

"Part III, § 307(e) . . . Differences in the classifications, rates, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provision of this Act." 54 Stat. 935, 49 U. S. C. § 905(e).

suspension and discontinuing the proceedings.[5] When the period of compulsory suspension ended, the carriers had voluntarily continued the suspension.

In its petition for rehearing and reconsideration of this report the Inland Waterways Corporation asserted that the Commission had permitted discrimination against a connecting line forbidden by § 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940.[6] It suggested that the Commission fix the existing proportional rates as the proper ones, stating that: "Theoretically, the Commission is not limited to a choice between the unlawful proposed rates and the present rates, but may, upon an adequate record, prescribe some different basis of rates for the future. Actually, no different proposal has been introduced which could support a different basis of rates than those presently in effect. That fact, however, cannot possibly militate to justify the proposed rates, but could only compel the postponement of any change in the present tariffs pending further hearing, and the introduction of a lawful proposal."[7]

The decision of the whole Commission on reconsideration was announced on December 1, 1941.[8] In it the Commission took official notice that certain of the protestant barge carriers had attained common carrier status under the Act, and stated that "no useful purpose would be served by further hearing or reargument."[9] The Commission reviewed the existing rate structure and the probable effects of the proposed changes in operation as contrasted to the effects of denying them, and said:

"The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial

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[5] 246 I. C. C. 353.

[6] See footnote 4, *supra*, for the text of this provision.

[7] Petitions for reconsideration were also filed by "Chicago protestants," operating elevators and dealing in grain at Chicago; Illinois Agricultural Association, representing shippers located on the Illinois Waterways; Finnegan Warehouse Company, operating an elevator on the Waterways; and the United States Department of Agriculture. These petitions are not incorporated in the record, but it appears that the action of Division 2 was assailed by these protestants under § 3(1), set out in footnote 4.

[8] 248 I. C. C. 307.

[9] From the report of the Commission it appears that the Inland Waterways Corporation was the only one asking further hearings. It stated that further hearings could be useful only to establish the information of which the Commission took official notice, and suggested that the Commission avoid the necessity for them by taking such notice.

effects being to reduce the profits of the Chicago elevator operators. . . .[10]

"Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory, and unduly prejudicial . . . and unduly preferential . . . . This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates, although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are, of course, determined by the measure of the in-bound and through rates and properly may vary according to the relative length and nature of the in-bound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations.

"The facts of record, as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

"On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

"(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

"(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful."

Accordingly the Commission ordered:

"That the order heretofore entered in this proceeding, suspending the operation of the schedules enumerated and described in

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10 Even under the proposed schedules, the combination barge-rail rates are in many instances lower than the all-rail rates. Much grain that arrives at Chicago is consumed locally or is shipped out by lake. In the case of grain arriving by rail, such disposition often leaves the elevator with a "transit balance" as a result of which ex-barge grain may move eastward by rail on the proportional rates.

The District Court apparently did not find that there was no evidence to support the Commission's finding that it was the elevator operator, rather than the farmer, who is affected by the proposed schedules. In any event, the foregoing would seem sufficient support for the Commission's finding, and we do not suppose that the finding makes any difference in the law to be applied,

said order, be, and it is hereby, vacated and set aside as of December 22, 1941, and that this proceeding be discontinued."

After the Commission had announced its decision and on December 12, 1941, appellant Mechling Barge Lines sought to intervene on the ground that since the record had been closed it had become a regular common carrier by water of grain by barge to Chicago and other rate-break points, and was entitled to the protection afforded to such carriers by the Transportation Act of 1940. It urged that the decision be set aside and, if it should be thought necessary to this end, that it be given an opportunity to introduce evidence. This was the first offer to assist the Commission in any way in the establishment of proportional rates fixed with reference to the ex-barge grain. No specific suggestion was made, however, as to the amount of such rates or as to the evidence which would be introduced in support. This petition was denied by the Commission on January 21, 1942.

On January 16, 1942, the Inland Waterways Corporation had filed its complaint in the United States District Court seeking an injunction against the enforcement of the Commission's order. Various other parties were allowed to intervene in the case as plaintiffs and defendants. The Attorney General did not participate, giving as his reason the existence of a conflict in litigation between coordinate agencies of the Government, the Agricultural Adjustment Administration and the Interstate Commerce Commission. The opinion of the specially constituted three-judge District Court was announced on April 16, 1942.[11] It stated that "The Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of Section 3(4) of the Interstate Commerce Act, as amended by the Transportation Act of 1940, or contrary to the National Transportation Policy enacted by the last said act; but the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed." It concluded that the order was of a "character which this Court is authorized to enjoin and set aside," and should be set aside on the ground that it "discriminates against water competition by the users of barges." It decreed that the Commission's order vacating the already-expired suspension of the proposed schedules and discontinuing the proceed-

[11] 44 F. Supp. 368.

ings be annulled and that the railroads be "permanently enjoined . . . from acting upon the authority of the aforesaid order."

The case is here on appeal.[12]

In the proceedings before the Commission the protestants pitched their case upon two propositions: (1) To deny the exbarge grain the benefit of proportionals sought to be cancelled was necessarily unlawful since the physical carriage beyond Chicago was substantially the same, no matter where the grain originated; (2) Since denial of that benefit was necessarily unlawful, the Commission was bound to maintain the *status quo* by cancelling the proposed schedules and thus perpetuating the existing rate structure, whatever might be its defects.

As the Commission correctly observed with reference to the first contention, "to adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned."

Proportional rates so differing and lower than local rates for like outbound transportation have a long history, antedating the Interstate Commerce Act itself. Long hauls have generally been thought entitled to move at a rate less than the sum of the rates for local or short hauls between intermediate points. The practice of routing commodities such as grain to centers for marketing and processing has been widespread and often a necessary feature of the process of distribution. In many instances stopovers for marketing and processing have not been considered as disrupting the continuity of transportation to more distant points, and consequently the grain has been allowed to move on at a rate lower than the outbound rate on grain originating locally and not from a distance.[13] To get the outbound business competing carriers frequently would offer rates similarly computed.[14] Proportional rates established on this reasoning[15] have become deeply embedded in

[12] Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 220, 28 U. S. C. §§ 47, 47a; § 238 of the Judicial Code as amended, 28 U. S. C. § 345.

[13] E. g., Unlawful Rates in Trans. Cotton by K. C., M. & B. R. R. Co., 8 I. C. C. 121; Central Yellow Pine Association v. V., S. & P. R. Co., 10 I. C. C. 193.

[14] Berry, A Study of Proportional Rates, 10 I. C. C. Practitioner's Journal 545, 602.

[15] For the variety of practices so sustained, see Locklin, Economics of Transportation (1935), pp. 122-123, 629-631.

the transportation system of the country, and have been approved by the Interstate Commerce Commission,[16] by the federal courts, this one included;[17] and, so far as it has spoken on the subject, by Congress itself.[18] We see no reason for repudiating them now.

Having pointed out the error of the protestants' basic contention, the Commission stated that: "It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on this ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations." Pending the commencement of such a proceeding it ordered the vacation of the already-expired order of suspension and ordered the discontinuance of the instant proceedings.

Despite this statement, much of the argument in this Court has proceeded upon the assumption that the Commission's order resulted from its belief and findings that the discrepancies between the proportional rates not cancelled in the proposed schedules and the local rates as applied to ex-barge grain were in all respects lawful, and that it actually approved or prescribed a rate structure containing such discrepancies. We do not so understand the action of the Commission.

True, the Commission stated that the railroads "are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic," and found that "the proposed schedules are shown to be just and reasonable." But this does not constitute a finding that the rates were lawful; they "may lie within the zone of reasonableness and yet result in undue prejudice" or otherwise violate the Act.[19] The Commission also stated that the facts of record show that "the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act."[20] But this statement

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[16] See the dissenting opinion of Chairman Eastman in the present case. Other cases are collected in Berry, *supra*, footnote 14.

[17] Atchison, T. & S. F. Ry. Co. v. United States, 279 U. S. 768; Great Northern Ry. Co. v. Sullivan, 294 U. S. 458; cf. Board of Trade v. United States, 314 U. S. 534.

[18] § 11 of the Panama Canal Act, 1912, 37 Stat. 566, now 49 U. S. C. § 6(11), set out in its present form in footnote 25, *infra*. Cf. Sen. Rept No. 433, 76th Cong., 1st Sess., p. 10.

[19] United States v. Illinois Central R. R. Co., 263 U. S. 515, 524.

[20] § 2, 49 U. S. C. § 2, reads as follows:

"If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter,

followed immediately upon the Commission's statement that from its conclusion that protestants' claim as a matter of right to the existing proportionals was erroneous, "It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-rail rates lower than the combinations." Read in the context, we think it meant only that the proposed schedules could not be struck down upon the erroneous view advanced by the protestants. The finding of the Commission that the proposed schedules "are not shown to be otherwise unlawful" is, we think, to be similarly read. This form of finding has been held by the Commission not to constitute an approval or a prescription of the rates under suspension.[21] Since the Commission refused to approve or prescribe them, they stand only as carrier-made rates which, under the Commission's decisions, leaves them open to possible recovery of reparations.[22] Like the Commission, we also refrain from approving or prescribing them.

The case had been developed before the Commission upon the theory that the proposed schedules must stand or fall in their entirety. There has been no suggestion, nor is it apparent, that it would have been feasible for the Commission to pick and choose among the items in the existing and proposed schedules.

To perpetuate the existing rate structure by sustaining the District Court's injunction would entail numerous and serious violations of § 4(1).[23] Under that rate structure, ex-barge grain moved from Illinois River points to Baltimore, New York and Boston at combination rates lower than the local rates for domestic grain from all points in Central Territory west of a line running south from Bay City, Michigan, through Fort Wayne and Indian-

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than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

The pertinent provisions of § 3 are set forth in footnote 4, *supra*.

[21] Standard Packing Co. v. Union Pacific R. Co., 190 I. C. C. 433; Parkersburg Rig & Reel Co. v. Chicago & N. W. Ry. Co., 198 I. C. C. 709; William Kelly Milling Co. v. Atchison, T. & S. F. Ry. Co., 211 I. C. C. 53; Kansas City Ice Co. v. Atchison, T. & S. F. Ry. Co., 215 I. C. C. 616, 619; Halifax Coal & Wood Co. v. Atlantic & Y. Ry. Co., 219 I. C. C. 594; Moorehead Cotton Mills Co. v. Chesapeake & O. Ry. Co., 231 I. C. C. 437.

[22] See cases cited in footnote 21, *supra*. Compare Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co., 284 U. S. 370; 50 Yale Law Journal 714.

[23] See footnote 2, *supra*, for the text.

apolis, Indiana. So also did the ex-barge grain move out at combination rates lower than local export rates on grain from all points in Central Territory west of a line running southwardly and south along the Indiana-Ohio line; and lower than the local export rates on corn from all points in Central Territory west of a line between Paynesville and East Liverpool, Ohio, near the Pennsylvania line. Unlike the barge-rail rate, the all-rail-rates are, as the Commission has found, in strict conformity with § 4(1). Congress by the Transportation Act of 1940 amended § 4(1), but nowhere in the Act or in its legislative history is there any suggestion that from the mere fact that grain moving from beyond Chicago to New York travels by barge for the 60-mile leg of its journey to Chicago—less than one percent of the total haul—it shall as matter of law be entitled to a rate from beyond Chicago to the seaboard less than that from the Pennsylvania line to the seaboard.[24]

Appellees make no better showing with respect to the effect of the injunction on the rate structure west of Chicago. To sustain the injunction would require a holding that grain originating 60 miles from Chicago must as matter of law be given the benefit of proportionals fixed with reference to grain from the Northwest Territory, embracing points in Canada and as far west in the United States as Washington and the Dakotas. In addition to the disparity in distances, there is the further fact that the grain from the Northwest is predominately wheat, while that from the territory served by the barge lines is predominately corn from Illinois. Nothing in the Interstate Commerce Act as amended by the Transportation Act of 1940, or in the statements of even the most ardent Congressional champions of water transportation, affords the slightest warrant for a decision that the Commission must treat as legally identical such widely disparate factual situations.

Finally it is claimed that the Commission was obliged to continue the § 15(7) proceedings and establish special proportionals for the barge lines under § 6(11) of the Act.[25] This duty is claimed by appellees to derive from the provision of § 15(7) that after

[24] Indeed, the legislative history shows that the water interests vigorously championed the long-and-short-haul clause as a measure necessary to prevent ruinous competition.

[25] § 6(11) provides:

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the trans-

suspension and hearing of a proposed rate change the Commission "*may* make such order with reference thereto as would be proper in a proceeding initiated after it had become effective." (Italics supplied). The construction contended for would have the effect either of imposing a practically impossible burden upon the Commission or of making resort to the Commission's powers under § 15(7) so rare as to make such powers of little practical significance. Suspension cases are very numerous, and in many of them the construction contended for would require the Commission to "readjust the entire rate structure of an important section of the country."[26] We have already noted the breadth of the rate structure here involved. To require the present proceedings to be continued until proportionals can be set with reference to the barge transportation would hardly be within the intention of Congress, which in terms made the Commission's power discretionary, and legislated upon the assumption, formed after much experimentation with the period of suspension,[27] that

portation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

" . . . . (b) To establish proportional rates or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water." 49 U. S. C. § 6(11).

[26] Salt from Louisiana Mines to Chicago, 69 I. C. C. 312, 313. See also, Livestock to Eastern Destinations, 156 I. C. C. 498.

[27] In the original form provided by § 12 of the Mann-Elkins Act, 1910, 36 Stat. 539, 552, the period of suspension was not to exceed 120 days, with the proviso that if the hearing could not be concluded within that period the Commission might in its discretion extend the time for a further period not exceeding six months. § 4 of the Commission Division Act, 1917, 40 Stat. 270, 272, provided that until January 1, 1920, Commission approval must be had for the filing of increased rates. By § 418 of the Transportation Act of 1920, 41 Stat. 456, 486, the initial suspension period of 120 days was retained, but the permissible period of further suspension was shortened to thirty days. "The increased size of the Commission and its divisional organization rendered the shortening of the suspension period feasible." 1 Sharfman, The Interstate Commerce Commission, 203. The Commission was authorized, however, to require the carrier to keep accurate account in detail of all amounts received by reason of an increase going into effect at the end of the period of suspension, and to require at the end of the hearing that they be refunded. The present provisions with regard to the Commission's power of suspensation and of requiring an accounting were enacted by § 2 of the Mayton-Newfield Act, 1927, 44 Stat. 1446, 1447.

suspension cases could normally be carried to completion within seven months and to that end commanded in § 15(7) that "the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

The record had been closed on January 26, 1940, when the last testimony was heard. The Transportation Act of 1940 was not enacted until September 18. At the time the evidence was taken it was not clear whether some of the barge lines operating in the water way were common carriers, and none had obtained certificates of convenience and necessity from the Commission as now required. They had not filed reports with the Commission from which the results of their own operations might be judged, and they had not filed tariffs showing their rates. All of this has since changed. The applicable law has changed. The issues raised by the position of the parties did not call for a fixing of new combination rates, for it was contended barge grain was entitled to the existing proportionals.

The policy provisions of the Transportation Act of 1940, as well as the specific statutory provisions, provide only standards of considerable generality and some overlapping. It requires administration to "recognize and preserve the inherent advantages of each"—rail, water, and motor transport. It also seeks "sound economic conditions" for all kinds of transportation.[28] For more than a year after the enactment of this Act, and until after the Commission had finally disposed of the case, appellees showed no disposition to make proposals or to develop a record upon the basis of which the Commission might prescribe rates in view of their particular circumstances and under the provisions of the Act designed with reference to them. Instead they relied upon the erroneous view that they were by law entitled to the fortuitous and in many respects unlawful benefits of the existing rate structure. Their nearly four years of litigation have not, however, been in vain, for during all this time they have managed to keep the proposed schedules in abeyance—first by compulsory suspension for the allowable period of 7 months at the hands of the Commission, then by the railroads' voluntary act at the expiration of that period, and finally by the compulsion of the District Court's injunction.

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[28] See footnote 4, *supra*.

Our function does not permit us either to prescribe or approve rates, and our decision carries no implication of approval of any rates here involved. Nor are we at liberty to prescribe general attitudes the Commission must adopt towards the exercise of discretion left to it rather than to courts. We decide only whether the Commission has acted within the power delegated to it by law. We are of opinion that it has and that the decision of the court below must be

Reversed.

MR. JUSTICE RUTLEDGE did not participate in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 175.—October Term, 1942.

The Interstate Commerce Commission, the Baltimore and Ohio Railroad Company, et al., Appellants, *vs.* Inland Waterways Corporation, et al. } On Appeal from the District Court of the United States for the Northern District of Ohio.

[June 14, 1943.]

Mr. Justice Black, dissenting.

The issue in this case is whether the farmers and shippers of the middle west can be compelled by the Interstate Commerce Commission and the railroads to use high priced rail instead of low priced barge transportation for the shipment of grain to the east. I agree that, in the words of Division 2 of the Commission, "this record is replete with complexities and technicalities" which have almost, but I think not quite, successfully obscured that simple issue. The District Court, which held that the Interstate Commerce Commission's order "discriminates against water competition by the users of barges" understood the issue.[1] The railroads, which proposed the increase in the cost to barge shippers, also understood the issue as is shown by the frank statement of their representative at the Commission hearing: "We made this proposal, as I have stated several times, and filed these tariffs with the hope that we could drive this business off of the water and back onto the rails where it belongs. . . . We are not in love with water transportation . . . and we believe that we are entitled to that grain business." From behind a verbal camouflage of "complexities and technicalities" there emerges one single easily understandable question: Railroads pick up grain in Chicago which may be brought there by rail, lake transport, or inland waterway barge. Is it lawful for a railroad to deprive midwestern grain farmers and shippers of the benefits of cheap barge transportation by charging a higher tariff for re-shipment of grain originally transported to Chicago by barge than the same railroad

[1] 44 F. Supp. 368, 375.

charges for re-shipment of the same grain from Chicago to the same places when the grain is brought to the re-shipping point by rail or by lake?

The record shows, and it was admitted at the bar, that barges can by reason of their inherent advantages carry grain more cheaply than railroads. The Commission found that inbound grain barge rates to Chicago ranged from 2.75 to 4.5 cents per hundred pounds for hauls of distances of 57 to 200 miles as contrasted with rail rates for the same distances ranging from 9.5 to 13 cents. Grain can thus be brought to Chicago far more cheaply by barge than by rail. However, only a small proportion of the grain which is sent to Chicago stays in that city, and the new tariff approved by the Commission and by this Court will charge so much more for the shipment of grain to the east when the grain is brought to Chicago by barge than is charged for shipment of grain brought in by rail that this natural advantage of barge transportation will be destroyed. Hereafter it will cost 8.5 cents more to ship ex-barge than ex-rail grain to the east.[2] Under the existing rates, a farmer can ship his grain from Kansas City to New York by barge to Chicago and rail from Chicago to New York for 4.625 cents less than if he uses rail transport all the way from Kansas City to New York. Under the new schedule approved today, that differential is wiped out, and he will hereafter pay 3.875 more to ship by barge and rail than if he ships rail all the way. This order in substance gives ex-barge traffic a 4 cent disadvantage where it previously had a 4 cent advantage. Similar penalties are imposed upon shippers who use barge lines in Missouri, Iowa, and Illinois. The Commission, as its sole finding on the impact of the rates on the barge lines, found that the new rates would not "prohibit" barge shipments. Such a finding is irrelevant. A rate need not be prohibitive to be discriminatory. The new rate is manifestly intended to and will have the effect of transferring most of the barge traffic to the railroads, since shippers will not customarily pay 10% more to ship by barge-rail than by rail alone.[3]

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[2] The figure given is the increase in cost of shipment to the best eastern market. The cost varies, depending on the destination of the grain.

[3] The new rates for shipment from Chicago to the east of course do not "prohibit" barge shipments to Chicago since the small amount of grain consumed in that city will not be affected by the outgoing rates, and some

Certain questions may be put to one side without elaborate discussion. The new rates cannot be justified on a theory of distinction between long and short hauls since the distances covered are substantially the same whether barge-rail or all rail transportation is used. The Court asserts that the existing all rail rates are lawful under the long and short haul clauses, while the existing barge-rail rates are unlawful. But there is nothing in the long and short haul clause which requires that shippers by rail to Chicago from points in Illinois, Iowa, Kansas, and Missouri must be granted a low rate for shipment beyond Chicago which is denied to those who ship into Chicago by barge. Nor is the fact that the rates directly affected by the new tariff are "proportional" of any significance.[4] A through rate may be invalid because of one factor only of the combination of rates which make it up, "and that factor may be a proportional rate."[5] The only issue to be decided is whether the barge shipper shipping from a given point to Chicago should be given any different proportional rate than rail shippers shipping from the same point to Chicago for equal service out of Chicago, and, for reasons to be set forth below, I find no justification for such a discrimination.[6]

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grain can still be carried to the east by lake transportation for so much of the year as the lakes are open to traffic.

The Court quotes the finding of the Commission that "the proposed schedules are not prohibitive" and that their principal effect will be to reduce the profits of the Chicago elevator operators. If the schedules operate unfairly, as I think they do, it is immaterial whether the farmers or the elevator operators bear the burden of the unfairness; but the Court in relying on this finding pays little regard to the fact that the court below found as a fact that the saving from barge transportation "accrues to the producer" and "does not accrue to the Chicago elevator operator." Unless the Court is willing, as apparently it is not, to re-examine the evidence and to conclude that the court below is in error, we must take the facts as they are given to us by the district court. In any case, I think the district court was correct.

[4] "A through rate is ordinarily lower than the combination of the local rates. When a through rate is made by combination of rates for intermediate distances the rate for the later link in the shipment is, when lower than the local, spoken of as a proportional rate." Atchison T. & S. F. Ry. v. United States, 279 U. S. 768, 771.

[5] *Ibid.*, 776.

[6] The Commission and the Court refer to the fact that ex-barge rates are now equal to ex-truck rates. This is irrelevant. If there is a discrimination against truck shippers, the remedy is an improvement of their situation, not a destruction of barge shipping. In the words of Chairman Eastman in his dissenting opinion, "My tentative opinion upon it is that where the movement by truck is from territory from which grain can be moved by rail or by water to Chicago subject to the application of the reshipping rates eastbound, the failure to apply such rates to the grain brought in by truck does result in violation of sections 2 and 3, provided adequate provisions for the identification and policing of such shipments are practicable and enforceable."

There is no factual issue here on which we are bound to accept the Commission's judgment as we were in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344. Here we have a rate revision which can serve no conceivable purpose except to force shippers to use railroads instead of barge lines. Reasonable persons may differ as to the wisdom of such a policy, but not as to the certainty of its result; and, as will be shown, Congress has made the policy judgment and has flatly forbidden the Commission to do what it has done. The situation is similar to *Mitchell* v. *United States*, 313 U. S. 80, 97, in which the Commission sought to shelter a flatly forbidden discrimination behind the shield of expertise. There, too, we were cited to the *Chicago Heights* case and our many other decisions upholding the right of administrative agencies to make factual judgments. We replied that "On the facts here presented, there is no room, as the Government properly says, for administrative or expert judgment with respect to practical difficulties. It is enough that the discrimination shown was palpably unjust and forbidden by the Act." Such I think should be our answer here.

This tariff is an unjust discrimination within the meaning of § 2 of the Interstate Commerce Act, 49 U. S. C. § 2, which prohibits a carrier from demanding a charge either higher or lower than is charged by any other person for doing for him "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." Many decisions make clear that this section does in fact require a real equality. *Interstate Commerce Commission* v. *Baltimore & Ohio Railway Co.*, 225 U. S. 326; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. The Commission counters with a contention that here there is "a dissimilarity of conditions prior to the rendering of the transportation service for which the charge in issue is assessed." True there is a difference, if only one, in the conditions prior to the rendering of the service from Chicago to the east. The difference is *solely* that one class of grain moves in to Chicago by barge and another moves in by other means; and this is a ground not of legitimate distinction, but of unfair discrimination. The discrimination would be no worse if the benefits of the cheap through rates were given only to shippers on a favored railroad coming into Chicago, and not to other shippers by rail. *Atchison, T. & S. F. Ry. Co.* v. *United States*, *supra*, 773. Here all circumstances and condi-

tions are substantially similar, and the Court ought to require the Commission to obey the law by following its own previously announced rule in *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I. C. C. 384, 392, 393, in which the Commission said: "If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic via the all-rail connections, they will be in a position to destroy all water competition and to deprive shippers of the advantage of their location upon navigable waters. . . . We are of the opinion and find that, by restricting their proportional rates to traffic routed over their southern rail connections, defendants are unjustly discriminating against complainant and against shippers who desire to route their goods over complainant's boat line."

The decision of the Commission also violates § 3(4) of the Interstate Commerce Act, 49 U. S. C. § 3(4), which under the 1940 amendment to the Interstate Commerce Act is applicable to the appellees, and which forbids carriers to "discriminate in their rates, fares, and charges between connecting lines." This section became applicable to the appellees in the course of the Commission's disposition of this case, but before its opinion was filed. This circumstance is not, as the Commission seems to have supposed, a reason for ignoring the section. No more obvious "discrimination in their rates, fares, and charges" can be imagined, particularly in the light of the general policy of the Transportation Act of 1940.

I think that approval of this tariff is a defiance of the Transportation Act of 1940. 54 Stat. 899. This Act declared it to be "the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each." Title I, § 1. The Act commands the Interstate Commerce Commission that "all of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." Congress, fearful, in the words of several members, that the Commission was "essentially a railroad minded body,"[7] took

[7] 84 Cong. Rec. 5965, 5883, 5880-81. Legislation similar in purpose to the 1940 Act was considered by Congressional committees in the 74th and subsequent Congresses. Opposition to legislation giving the Commission authority over water transportation came from representatives of the water shippers. A typical protest was made by Cleveland A. Newton, General Counsel, Mississippi Valley Association, in the hearings before the Committee on Merchant

every precaution to prevent discrimination against water carriers.[8]

Senators, particularly those from the midwestern states where the barge lines involved here were operating, were especially fearful that the Commission would do substantially what it has done in this case. They required repeated assurance by the Chairman of the Interstate Commerce Committee of the Senate that the bill was written in such manner that the Commission could not if it desired permit discrimination against water carriers. At great length the Chairman of that Committee explained to apprehensive Senators that the bill contained provisions in three different places which imposed upon the Commission the imperative duty of standing in constant opposition to discrimination against shippers by water.[9]

House Members shared the same fears. The first conference report was defeated in the House because it was believed that the bill did not offer adequate protection for water carriers against hostile Interstate Commerce Commission action.[10] A proponent

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Marine and Fisheries, House of Representatives, 74th Cong., 2d Sess., on H. R. 5379: "This bill if enacted into law will place water carriers along the coast and upon our inland rivers under the absolute domination and control of the Interstate Commerce Commission. That Commission was created to regulate, conserve, and control railways. It is a railway-regulating agency. It naturally has the railway viewpoint, and past experience convinces us that the Commission, as now constituted, is railway-minded and that it would not be in the public interest to place water services under its domination and control. . . . We have observed the performance of the Commission in the past, under a comprehensive declaration of policy enacted by Congress, and that experience, we regret to say, has not inspired confidence." Hearings, p. 471.

8 "Mr. Lucas: . . . Under the bill, as I understand it, the Interstate Commerce Commission would have the power, and it would be its duty, to fix rates on the Illinois River with respect to the transportation of that wheat and corn. Would it be possible for the Interstate Commerce Commission to fix the rate the same as the railroad rate from that point to St. Louis?

"Mr. Wheeler: Not if the Commission does its duty, because the bill specifically provides that it must take into consideration the inherent advantages of the water carrier. Everyone agrees that goods can be shipped more cheaply by water than by rail." 84 Cong. Rec. 5879.

The following Senators and Representatives, among others, either required assurance that the Commission would not discriminate against water carriers or expressed the conviction that under the statement of policy, the Commission would be unable to discriminate against water carriers: Senators Austin, Clark of Missouri, Connally, Ellender, Lucas, Miller, McNary, Norris, Pepper, Shipstead, Truman, and Wheeler; Representatives Bland, Bulwinkle, Crosser, Culkin, Halleck, Lea, Pierce of Oregon, Sparkman, and Wadsworth.

9 84 Cong. Rec. 6125-6128.

10 The first conference report was rejected by the House on May 9, 1940, 86 Cong. Rec. 5886. The second report was accepted on Aug. 12, 1940, 86 Cong. Rec. 10193.

of the bill told the House that "It is not fair to suggest, in my opinion, that the Commission and the courts will not look to this declaration of policy whenever they are called upon to make such construction of the statute and application of it . . . The specific provisions of the bill carry out the declaration of policy. The courts and commissions will recognize that. . . ."[11] Defending the policy provisions as a complete protection against Commission action antagonistic to barge transportation, another sponsor of the bill, opposing a safeguarding amendment, declared that to consider it necessary "You will have to further assume that the Interstate Commerce Commission will not enforce it. You will have to assume that if a case goes to the courts, the courts will neither construe nor enforce the provisions of this policy."[12] As I see it, the Commission in this case has declined to enforce Congress's policy and the Court has failed to construe and enforce the Act as Congress clearly intended it should.

This is not all. The first conference report having been defeated, the second conference report brought in changes intended to offer more protection to water carriers. The conferees reported that: "This measure will place upon the Interstate Commerce Commission, not only the power, but the duty, to protect and foster water transportation and preserve its inherent advantages."[13] As a closing, clinching argument intended to persuade the House that the Commission would be fair to water carriers, the statement of Commissioner Eastman (who dissented from the order of the Commission here) was quoted. Eastman assured the Congressmen interested in water transportation that certain provisions of the bill "coupled with the admonition in the declaration of policy in section 1 that the provisions of the act be so administered as to recognize and preserve the inherent advantages of each mode of transportation, will afford adequate protection in this respect. If experience should show that further protection is needed, contrary to our expectation, Congress can amend the act, but such a restriction as is now proposed is, we believe, both unnecessary and undesirable."[14]

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11 84 Cong. Rec. 9865.

12 84 Cong. Rec. 9863.

13 86 Cong. Rec. 10172.

14 86 Cong. Rec. 10191. In his dissenting opinion, Chairman Eastman said: "The report states that the 'proposed schedules will not prohibit the movement by barge-rail even to trunk line territory, their principal commercial

The final statement of the last proponent of the 1940 Act, spoken just before the vote was taken on the second conference report, were these: "There is nothing whatever in the pending measure which could by any fair interpretation be regarded as unjust to water transportation or to any other kind of transportation." The speaker then read the policy provisions of § 1 and asked: "How much plainer could language be than that is? It is crystal clear that there is no basis in the bill for the apprehension expressed by those opposed to the measure."[15]

Although these proceedings were not initiated under the 1940 Act,[16] the Commission should have felt itself bound by that congressional expression of policy. Yet the legislative history just recited makes it clear that the Commission has flagrantly flouted the express mandate of Congress. It is said, however, that the Commission reserves the right to take further action in a "proper proceeding" in which it "*might* prescribe proportional rates [on the ex-barge traffic] or joint barge-rail rates lower than the combinations." At some future day the Commission may correct this discrimination. But the day for Commission action was the day this case was decided, and the day for action by this Court is now. The Commission is not bound by the technical procedures of the common law, and it should not strain to avoid the enforcement of congressional will because of the formal fashion in which questions are presented to it. In this proceeding it was the Commission's duty "to protect and maintain a transportation system free from partiality to particular shippers. The Commission acted in its capacity as a public agency" and was obligated to carry out "duties imposed upon it by Congress in the interest of shippers generally, the national transportation system and the public interest." *United States* v. *Trucking Co.*,

effect being to reduce the profit of the Chicago elevator operators.' I do not so understand the evidence. . . . As I understand it, the effect of the proposed schedule, unless the prices paid to the farmers whose grain is barged are reduced, will be to limit the outlet of the ex barge grain to local consumption in Chicago and to the lake and lake rail routes to eastern points."

15 86 Cong. Rec. 10192.

16 The 1940 Act gave the Commission jurisdiction to regulate water transportation directly. Here the same effect is achieved under the Commission's other powers by a tariff aimed at shippers who have previously used water transportation. For the background and nature of the 1940 Act see Eastman, The Transportation Problem, 30 Amer. Econ. Rev. 124; Stein, Federal Regulation of Water Carriers, 16 Jour. Land and Pub. Util. Econ. 478; Harbeson, The Transportation Act of 1940, 17 *ibid.* 291; Regulation of Water Carriers, 50 Yale L. Jour. 654.

supra, 354. The fact that this was not a formal proceeding to fix proportional rates under § 6(11)(b) did not detract from the Commission's powers. *Chicago R. I. & P. R. Co.* v. *United States*, 274 U. S. 28, 36; *United States* v. *New York Railroad Co.*, 272 U. S. 457, 462. The Commission itself in cases where the command of Congress was far less emphatic than here, has stated that an investigation and suspension proceeding such as this one "opens for consideration the lawfulness of the suspended rate under all provisions of the act." Sugar From Gulf Coast Port Groups To Northern Points, 234 I. C. C. 247, 251. "The reproach of dealing with the matter piecemeal" is incurred by the Commission here as it was in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 510. It cannot, with due regard to its duty, shift responsibility "from the shoulders of the present to the shoulders of the days to come." Here, as in that case, postponement serves to leave "this particular carrier helpless in the interval."[17]

Congressman Bland, who opposed the 1940 Act on the ground that it lacked sufficient safeguards to prevent action by the Commission hostile to water transportation called attention to the procedural delays in rate cases before that body, delays which he declared would be used to strangle financially weak water carriers, forcing them to "yield or transfer their operation to other streams." He pointed out this "would mean the death of water carriers;" that the railroads knew how to obtain delay and knew the disastrous consequences that would follow to their competitors; that railroads "seek to profit" by procedural delay; and that the diversity of their interests and extent of their revenues was so great that they could survive delays which would be unendurable for competitors.[18] The Congressman was a good observer and a sound prophet.

The judgment of the District Court enjoining enforcement of this order was correct and should be affirmed.

Mr. Justice Douglas and Mr. Justice Murphy join in this opinion.

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[17] The Court interprets the Commission's order as leaving open the right of the shippers affected to bring actions for reparations for injuries suffered under the new rates. This will bring small practical comfort to the barge lines since the shippers will be unlikely to ship by barge when the price of every shipment is dependent on future legal proceedings. The barge lines, "helpless in the interval" pending new legal proceedings, risk serious financial injury, if not bankruptcy. While the shippers can ship by barge now and sue later, they are presumably interested in buying transportation, not lawsuits.

[18] 86 Cong. Rec. 10181.